

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore 560 038.

Dated: 30-10-87

APPLICATION NO 463 / 87 (F)

W.P.No.

APPLICANT

VS

RESPONDENTS

Shri N.E. Kuri

The Senior Supdt of Post Offices,
Gulbarga Divn, & another

To

1. Shri N.E. Kuri
C/o Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050

2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050

3. The Senior Superintendent of Post Offices
Gulbarga Division
Gulbarga - 1

4. The Member (Personnel)
P & T Board
New Delhi

5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/87/87
passed by this Tribunal in the above said application

on 26-10-87.

RECEIVED (5/11/87)

Diary No. 1300/CP/87

Entered Date: 26/11/87

Encl: as above.

R. Venkateshwar
DEPUTY REGISTRAR
(JUDICIAL)

Received copies for
3 & 4
R. Venkateshwar
Asst. of P.M.L.B.
2/11/87

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
DATED THIS THE TWENTYSIXTH OCTOBER, 1987

Present: Hon'ble Shri L.H.A. Rego ... Member (A)
Hon'ble Shri Ch. Ramakrishna Rao ... Member (J)

APPLICATION NO. 463/87

Sri N.E. Kuri
S/O. E. Kuri
Major
SPM, Nimbala
Gulbarga-1. ... Applicant
(Shri M.R. Achar, Advocate)

Vs.

1. Senior Superintendent
of Post Offices
Gulbarga Division
Gulbarga - 1.

2. Member
P & T Board
New Delhi. ... Respondents
(Shri M. Vasudeva Rao, Advocate)

This application has come up for hearing
before this Tribunal today, Hon'ble Shri L.H.A. Rego,
Member (A), made the following:

O R D E R

In this application, filed under Section 19
of the Administrative Tribunals Act, 1985, the applicant
has challenged the impugned letter dated 5.7.1985 (Annexure-C)
passed by Respondent (R)-1 (accompanied by the original
order dated 31-1-1985 of R-1, dismissing the applicant
from service with effect from 31-1-1985), as also the
order dated 14-4-1987 passed by R-2 (accompaniment to



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Annexure-F) rejecting the petition of the applicant.

2. The facts minimally necessary to familiarise with the background to this case are as follows: The applicant entered service as a Postal Assistant, in the Post and Telegraphs Department and belongs to the scheduled tribe. To date, he is said to have completed 18 years of service.

3. At the material time, he was working as Sub-Postmaster (SPM, for short) at Nimbala, District Gulbarga. When R-1 visited his office at Nimbala on 4-11-1981, he noticed that the applicant was absent and had kept the office locked during office hours. R-1 therefore opened the Sub-Post Office, in the presence of the panchas and lodged a complaint with the Station House Officer, at Nimbala Police Station. It came to light, that the applicant had misappropriated an amount of Rs 7610/- and committed other serious irregularities. He was therefore arrested on 19.11.1981 and a criminal case ^{was} lodged against him, in the Court of J.M.F.C. Aland, in regard to misappropriation, which case is pending. As regards other serious irregularities of violation of departmental rules, a departmental enquiry (DE, for short) was initiated against him under the provisions of Rule 14 of the CCS(CCA) Rules, 1965.

4. Shri B.M. Manthalkar, Officiating Sub-Divisional Postal Inspector of Post Offices, is said to have conducted the preliminary enquiry. Shri Satyanarayana, Assistant Superintendent of Posts (Hqrs.), Bidar Division,



was appointed as the Inquiry Authority ('IA', for short) (Annexure A-9) and Shri P.N. Kalishat, ASPO, Gulbarga Division, as the Presenting Officer (Annexure A-8). The DE was initiated on 31-3-1982, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ('1965 Rules, for short). The applicant was furnished with the Statement of Articles of Charges, as also of the imputations of misconduct in support thereof (~~vide~~ Annexure A-3). The three articles of charges, framed against him principally related to violation of Postal Rules, in regard to maintenance of the SO Account, accounts registers and their abstract and retaining cash balance with him, in excess of the authorised maximum, for the periods indicated in each of the three articles of charges, wherein, it was stated, that the applicant had failed in his devotion to duty and had thereby contravened the provisions of Rule 3 (1)(ii) of the Central Civil Services (Conduct) Rules 1964 ('1964 Rules' for short).

5. The I.A submitted his Inquiry Report to the DA on 31.7.1984 (pages 34 to 46 of the Application) stating, that all the three charges were proved except Charge I, which was proved partly. The DA by his order dtd. 31.1.1985, accompanying his letter dated 5.7.1985 (Annexure-C), ^{re} concurred with the findings of the IA, ^{and} imposed the punishment of dismissal of the applicant from service, with effect from 31.1.1985.



6. The applicant did not however prefer an appeal, against the above order of dismissal, but submitted a petition thereon, under Rule 29 of the 1965 Rules, to R2, on 31-5-1986 (Annexure-D). As this petition was not disposed of, the applicant approached this Tribunal, through Application No.89 of 1987, which was disposed of on 30-3-1987, with a direction to R2, to dispose of the petition, within three months from the date of receipt of the order. The applicant was given the liberty to move this Tribunal, if he was aggrieved by the order passed by R2, on his petition.

7. In compliance with the above direction of this Tribunal, R2 disposed of the petition by his order dated 14-4-1987 (accompaniment to Annexure-F), rejecting the same. Aggrieved thereon, the applicant has come before us, through the present application, for redress.

8. Shri M.R. Achar, learned Counsel for the applicant, alleged, that Shri Manthalkar, who conducted the preliminary enquiry, bore personal animus against the applicant. He also alleged, that Shri Manthalkar was involved in a serious criminal offence, on account of which, his integrity was questionable. In this connection, he referred to the incident reported in the local Kannada daily (Annexures A-4 to A-6). Shri Achar pointed out, that Shri Manthalkar seized the documents from the office of the applicant, without any



justification and without drawing up a mahazar.

The DE was initiated on the basis of the report sent by Shri Manthalkar. Shri Achar asserted, that the DE based on the preliminary enquiry report submitted by Shri Manthalkar in the above manner, whose antecedents were shady (on account of his being involved in a serious criminal offence as aforementioned), was illegal and void.

9. Apart from the above, Shri Achar submitted, that the DE held against the applicant, suffered from many infirmities. Firstly, he pointed out, that if ~~it~~ was held ex parte and no reasonable opportunity was afforded to the applicant, to defend his case. Besides, he said, the applicant was unwell during the period of the DE and had submitted the requisite medical certificate from the District Surgeons, to cover his period of absence on account of illness, but the same was not accepted by R-1 on the ground, that these medical certificates were not genuine. The applicant was not given an opportunity, to explain his absence on medical grounds, which he said, was clearly violative of the principles of natural justice.

10. According to Shri Achar, there was no charge against the applicant in regard to fraud or misappropriation of Government money or tampering with accounts. The articles of charge as worded, referred to mere violation of the rules, on account of failure



to maintain the S.O. Account and the accounts registers and retention of cash balance in excess of the maximum stipulated. Consequently, Shri Achar, argued, the gravity of the charges was not such, as to warrant the extreme penalty of dismissal of the applicant, from service.

11. In not furnishing the documents essentially required by the applicant for his defence, as indicated by him at Annexure-7, Shri Achar alleged, that his client was denied fair and reasonable opportunity for his defence. He said, that the Department had in fact stated, that the documents were not available as they were weeded out.

12. Shri Achar next alleged, that the DE was pursued against his client, even though he had pleaded inability to attend, on grounds of illness, supported by medical certificates and had complained, that the IA was biased against him. Consequently, he said, ^{in k} DE was virtually held ex parte, against the canons of justice. In this connection, he referred to the representation dated 13-2-1984 (Annexure A-10), addressed by the applicant, to the Post Master General, Karnataka Circle, Bangalore, which was disposed of by a cryptic order by the latter, communicated not directly but through R-1, on 12-3-1984 (Annexure A-11), which he said, bespeaks the manner in which justice was imparted to his client.

13. In an effort to shield his client, in respect of the charge, that he had failed to render

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monthly accounts to his superiors as required, Shri Achar sought to shift the blame to the immediate superiors of his client, who he alleged, failed to exercise due care and vigilance in this regard but were not proceeded against. In view of this, he contended, that the evidence of Shri R.S. Bidi, the then Postmaster, Shahabad (P.W.2), on whose report the DE in fact was initiated against the applicant, was not worthy of credence.

14. He next sought to assail the credibility, of the testimony of Shri Manthalkar, the then Sub-Divisional Inspector (P), Gulbarga Sub-Division No.II (P.W.1) primarily, on account of his doubtful integrity, arising from his involvement in a grave misconduct, in a criminal case. DE based on the evidence of such a person, he said, was ab initio ~~de~~ void and the proceedings illegal.

15. Shri Achar averred, that Shri Manthalkar and Shri Bidi, were the two prime prosecution witnesses in this case. He contended, that if their evidence was ignored for the reasons aforementioned, there would be no evidence whatsoever, against the applicant, to sustain the charges against him and the DE therefore should end in his acquittal.

16. Adverting specifically to the charges framed, Shri Achar submitted, that the oral evidence referred to by the IA, in relation to Charge II in his Inquiry Report, was not substantiated. Charge-I too, he

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said, was not conclusively proved as the pertinent account returns were not examined. As regards Charge III, the so called irregularity of retaining cash balance in excess of the authorised maximum limit, for the period from 15-9-1981 to 31-10-1981, was according to Shri Achar, discovered far too belatedly, on 15-3-1982 i.e., after a lapse of nearly 6 months. Even then he said, the very words "fictitious liabilities", as expressed in the article of this charge, exculpated the applicant of the imputed charge and therefore ipso facto, Charge III against the applicant, should fail on the basis of 'no evidence.'

17. Shri Achar pointed out, that when Shri Manthalkar (PW-I), inspected the office of the applicant at Nimbala, on 16-9-1981, in the course of his preliminary investigation, as directed by the Senior Superintendent of Post Offices, Gulbarga, all that he noticed was, that the Sub Office Accounts Register and the Parcel Abstract and the various statistical registers as prescribed, were not maintained up-to-date, from June 1981 to 16-9-1981, and ~~he~~ therefore, ^{had} instructed the applicant, to complete the entries and bring these registers and the accounts up-to-date. Shri Manthalkar had verified the cash and stamp balance and had found ^{the same} ~~it~~ correct. He had also stated, that the cash balance on hand with the applicant, as on the date of his visit,



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namely, 16.9.1981 was adequate, to discharge some of the liabilities. Shri Achar pointed out, that Shri Manthalkar had ~~deposed~~ as above, in his examination-in-chief by the IA, on 10.11.1983.

Viewed in the light of this deposition, he argued, that the charges framed against the applicant had come to be unduly magnified, so as to hold him liable to the extreme punishment of dismissal from service, which in the circumstances of the case was without warrant.

18. As a last resort, Shri Achar pleaded for clemency to his client, by moderating the extreme penalty of dismissal from service, taking into account, the long length of service of about 16 years, rendered by him without blemish, except for the instant case.

19. Shri M. Vasudeva Rao, learned counsel for the respondents, sought to refute the various contentions of Shri Achar. He stated, that the contention of Shri Achar, that the applicant was not afforded reasonable opportunity to defend himself, and that the DE was held ex parte, to the prejudice of the applicant, did not accord with facts. In referring to the Inquiry Report of the IA (page 38) he pointed out, that the applicant was given more than adequate opportunity, on as many as eleven dates, from 19.7.82 to 28.4.84 covering a long period of nearly two years, to participate in the DE but yet he



failed to avail of the same. This he said, could lead to no other inference, than that, he intently and wilfully declined this opportunity. The administration in these circumstances had no other alternative, than to proceed with the DE, in the manner it did and therefore, the applicant had no moral right to point a finger of accusation, towards the respondents in this regard.

19. As regards the plea of the applicant, that the medical certificates from the Government doctors, produced by him in support to his illness, was ignored by the concerned authorities, Shri Rao clarified, that the applicant manoeuvred, to obtain these certificates from different doctors, on different dates. The District Surgeon had clearly opined, he said, that the applicant was not so gravely ill, as to prevent him from participating in the DE. Even then, there was a clear gap of 10 weeks, when no sittings were held in the course of the DE. The applicant, he said, was even seeking to change the venue of the sittings. The DE proceedings were sent to him thrice but on each occasion, they were returned by him unacknowledged. The above conduct of the applicant, Shri Rao averred, clearly revealed dilatory and evasive tactics on his part, solely with the motive of stultifying the DE.

20. Shri Rao submitted, that the three charges were framed (Charge II, in part) on the basis of documentary evidence and that the applicant was permitted access to the relevant documents.



21. The allegation of personal animus between the applicant and Shri Manthalkar he said, was a figment of the applicant's imagination and there was no evidence to prove, that the integrity of Shri Manthalkar was suspect. Therefore, the inference drawn by Shri Achar on both these premises, that the DE was ab initio, void and illegal, he said, was baseless.

22. According to Shri Rao, the contention of the applicant, that the IA was directly working under the DA and was therefore biased, is unfounded, as the DA was from an independent Postal Division at Bidar, while the applicant and the DA, were from Gulbarga Division.

23. In the end, Shri Rao submitted, that the applicant had no case whatsoever, to justify the interference of this Tribunal, with the punishment of dismissal from service, meted out to the applicant.

24. We have bestowed due thought on the averment of both sides and have examined carefully, the relevant documents and other material placed before us. Shri Achar has alleged personal animus on the part of Shri Manthalkar, towards the applicant and about his adverse antecedents. He has also alleged, about bias on the part of the IA, on the premise, that he was overawed by his immediate superior namely, R-1



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and was mechanically acting under his directions to the prejudice of the applicant. Apart from an oblique reference to Shri Manthalkar, in the alleged incident, in the local newspaper reports (Annexures A-4 to A-6) which appear to be unsubstantiated, no concrete evidence has been adduced before us, to prove, that Shri Manthalkar was of doubtful integrity and therefore, the preliminary investigation report submitted by him, against the applicant, lacked credibility. Shri Rao categorically denies the allegation of Shri Achar in this respect, and confirms, that there is no evidence whatsoever, to support that allegation. Besides, Shri Achar himself in the course of his argument before us admitted, that in his examination-in-chief before the IA, Shri Manthalkar's deposition was favourable to the applicant and in fact, Shri Achar is relying on that deposition, to advance the case of his client. In these circumstances, the contention of Shri Achar, that Shri Manthalkar bore animus towards his client and that his integrity was suspect and that consequently, the DE based on the preliminary investigation report submitted by Shri Manthalkar, is ab initio, void and illegal, does not at all carry conviction. We therefore, reject the same.

25. The other accusation of Shri Achar about "official bias" of the IA towards his client on the sole premise, that he was supinely complying with the instructions of R-1, in conducting the DE against his



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client, seems to be make-believe and has no basis whatsoever. The following rulings in regard to "official bias", are ^{as} opposite to the case before us and clearly bring out, that "official bias" does not vitiate the proceedings in a DE.

AIR 1961 AP 37 (K.R. CHARI v. CANTONMENT BOARD,

SECRETARY):

"An authority discharging functions under a particular statute or the rules framed thereunder is not disqualified from acting on the ground of official bias. Thus the disciplinary action taken by a statutory Board is not open to challenge, because one of its members is presumed to have previous knowledge of the facts of the charge."

AIR 1961 S.C. 1743 (REGISTRAR OF CO-OPERATIVE SOCIETIES - vs. DHARAM CHAND):

"The fact that the Registrar gave notice for the purpose of the removal of the managing committee, was no reason to hold, that he would be biased in the investigation of individual responsibility of various members of the managing committee in this matter. Even though the Registrar was the administrative head of the Department, there was nothing inherent in the situation, which showed any official bias whatsoever in him, so far as adjudication of this dispute was concerned, as there was no reason to suppose, that if any of his subordinates or the auditors appointed by him, were in any way found to be connected with the fraud he would not put the responsibility where it should lie."



We, therefore, find no substance in the above contention of Shri Achar.

26. The contention of Shri Achar, that his client was denied reasonable opportunity to defend his case, by not accepting the medical certificates produced by him from the District Surgeons, to cover his period of absence on medical grounds, also does not satisfy us, considering the fact, that he did not co-operate with the Department, in the DE, even though he was given an opportunity, on as many as eleven occasions, over as long a period of nearly two years, to do so. Besides, as certified by the District Surgeon, the nature of his illness was not such, that he was physically incapacitated from attending the DE. This apart, the applicant is seen to have intently evaded on as many as ~~on~~⁴ three occasions, receipt of the disciplinary proceedings, sent to him by the IA, by post. It is clearly manifest from the above facts, that the applicant was evasive and manoeuvring to stall the disciplinary proceedings initiated against him. Under these circumstances, the administration had no other alternative, ^{to} ~~but~~ to proceed with the DE, in the manner it did and the plea of Shri Achar, that the DE was held ex parte and behind the back of the applicant, needs to be taken cum grano salis. We, therefore, reject this plea too.

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27. The last ground of attack by Shri Achar, was, that the charges were not proved on conclusive evidence, as the pertinent accounts returns, were not duly examined and Charge III itself was worded in such a manner, as to knock out its very basis, as the expression "fictitious liabilities" as used in that charge, in itself revealed, that the charge had a weak foundation and therefore, the effect would be, that it would demolish the superstructure of the charge itself.

28. Shri Rao pointed out, that it was clear from documentary evidence, that the applicant had failed to maintain and submit the monthly returns regularly for long spells, extending over a period of 5 months or so, in accordance with the prescribed rules and regulations. ^{The officer} He only submitted the daily account and that too in a haphazard manner, but failed to maintain regularly, the monthly Sub-Office Account, as also other registers, as prescribed by the rules. As regards retention of cash balance in excess of the maximum limit authorised under the rules, Shri Rao invited our attention to the tabular statement in the Inquiry Report of the IA, which showed the details of cash balance, held by the applicant daily, far in excess of the maximum limit of Rs 3,000/- prescribed. He said, the applicant for reasons best known to him, failed to clear the liability every day, from the cash balance at his disposal, which was more than adequate for the purpose.



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The aforesaid tabular statement, he said, revealed that the applicant was not earnest in clearing the liability every day and in many cases discharged a paltry sum, as compared to the total liability he had to discharge. The charge of retaining excessive cash balance, beyond the prescribed maximum limit of Rs 3000/- a day, was thus, according to Shri Rao, clearly established. We perused the above tabular statement and also heard Shri Achar, who could not satisfactorily explain to us, as to why the applicant could not clear the liability daily, within the cash balance on hand, ^{he also} with him. He was not ^{able} to show to us, the monthly and other returns regularly sent if any, ^{by} the applicant to his superiors, in accordance with the rules and regulations. If ill-behaves the applicant, to seek shelter behind the expression "fictitious liabilities" rather loosely used in the said charge, in the face of clinching evidence, to prove the guilt of the applicant in respect of this charge.

29. In the above circumstances, we are convinced, that the applicant is guilty of the charges framed against him, as held by the IA and confirmed by the DA and by R-2 in review.

30. We shall now proceed to examine the request made by Shri Achar as a last resort, to modify the extreme penalty of dismissal of service of his client,

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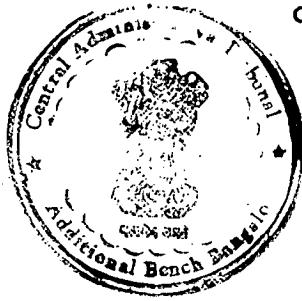
taking into account the nature of the charge, levelled against him, the guilt of the applicant and length of service, spanning about 16 years put in by him, which is said to be without blemish but for the present case. Sri Rao however opposed the request of Shri Achar, as he contended, that any leniency in this respect would be fraught with adverse effect on administrative integrity and efficiency.

31. Viewing the case in its entirety, we feel, that the request of Shri Achar merits consideration on the points urged by him. We have seen the service record of the applicant and find, that he has not come to adverse notice but for this case, during his period of service spanning over a decade and a half. The applicant had quite some years ahead of him, before his superannuation in the ordinary course. We are therefore satisfied, that the ends of justice would be met, if the penalty of dismissal of service imposed on the applicant, is reduced to that of compulsory retirement, with effect from 31-1-1985 i.e., the date from which, he was dismissed from service.

32. In the result, we make the following order:

ORDER

(i) We hold that the applicant was guilty of the charges framed against him, as decided by the DA and confirmed by R-2 and that consequently, he is liable to be punished.



(ii) We reduce the penalty of dismissal from service, from 31-1-1985, imposed on the applicant, to that of compulsory retirement from that date, subject to the condition, that he would not be entitled to arrears of retiral benefits from 31-1-1985 to 31-10-1987 (except in regard to gratuity) but only thereafter, according to the rules and regulations prevalent.

(iii) We direct the respondents, to determine retiral benefits inclusive of the gratuity and pay the same to the applicant, within three months from the date of receipt of this order.

33. The application is disposed of on the above terms. There will be no order as to costs.

Sd/-

MEMBER (A) 26. x 1987

Sd/-

MEMBER (J) 26/1/1987

- True Copy -

mr.



R. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL [SOL] 1987
ADDITIONAL BENCH
BANGALORE