

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 30-11-87

APPLICATION NO 688 /87 (F)

W.P.No. _____

APPLICANT

vs

RESPONDENTS

Shri G.N. Adamani

The Supdt of Post Offices, Haveri Division,
Haveri & another

To

1. Shri G.N. Adamani

Ex-ED DA
Betakerur B.O.
A/W - Maunsbhavi
Haveri Division
Haveri

2. Shri M. Raghavendra Achar

Advocate
1074-1075, Banashankari I Stage
Bangalore - 560 050

3. The Superintendent of Post Offices

Haveri Division
Haveri

4. The Director of Postal Services

North Karnataka Region
Dharwad - 580 001

5. Shri M.S. Padmajaiah

Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Recd. Copy

07.00 AM

7-12-87

b/s
B. T. T. T.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/

~~INTERIM ORDER~~ passed by this Tribunal in the above said application
on 25-11-87.

RECEIVED

(5 copies 9/12/87)

Diary No. 1508/CA/10

Date: 10-12-87

Encl: as above.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 25 TH DAY OF NOVEMBER 1987

Present : Hon'ble Justice Shri K.S.Puttaswamy ... Vice-Chairman

Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO. 688/87(F)

G.N. Adamani,
E - EE-DA, Betakerur B.O.,
A/W - HAUNS BHAVI,
Haveri Division,
Haveri.

... Applicant

(Shri M.R. Acher .. Advocate)

v.

Superintendent of Post Offices,
Haveri Division, Haveri.

Director of Postal Services,
North Karnataka Region,
Dharwad - 580 001.

... Respondents

(Shri M.S. Padmarajaiah .. Advocate)

This application came up for hearing before this Tribunal on
20.11.1987. Hon'ble Shri P. Srinivasan, Member (A) made the following:

O R D E R

The applicant who was working as Extra Departmental Delivery Agent in the Branch Post Office at Betakerur Branch Office of the Post and Telegraph Department was removed from service after departmental inquiry by order dated 30/31.10.1985 passed by the Disciplinary Authority (DA), the Superintendent of Post Offices, Haveri Division, Haveri. The applicant's appeal against this order was rejected by the Appellate Authority (AA), Director of Postal Services, Dharwar, by order dated 30.5.1986. In this application the applicant has challenged the order of DA dated 30/31.10.1985 (Annexure A) and during argument it was clarified that as a consequence the applicant also challenges the order of the AA dated 30.5.1986 (Annexure B) and wants both these orders to be set aside.

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applicant not on 25.8.1984 but on the following day i.e., on 26.8.1984, the applicant had made an entry of a balance of Rs.200 representing unpaid money orders, but he did not find the cash in the postman's book. Thus the statement in the BPMs deposition that he had actually paid Rs.900 to the applicant on 25.8.1984 against the applicant's acknowledgement in the branch office journal of Rs.800 only, the absence of cash shortage in the branch office till 28.8.1984 and the improbable statement that the BPM had himself made up the shortage during this period from his own pocket or by borrowing from others when he could easily have debited the entire amount of Rs.300 to the UCR account on 25.8.1984 itself, coupled with the fact that the BPM himself was charge-sheeted for the same shortage and was upto making any statement to save his own skin, rendered his evidence totally value-less. The statement of the BPM therefore, did not constitute legal evidence against the applicant and apart from his statement there was no evidence whatsoever to find the applicant guilty of the charge. The BPM was removed from service after departmental inquiry in respect of the same shortage of Rs.200 and his appeal against the punishment had been dismissed, but he had been subsequently taken back into service by the PMG when he made a petition in that regard. Imposing the punishment on the applicant relying on the statement of the BPM which was so full of inconsistencies was illegal.

3. Shri M.S. Padmarajaiah appearing for the respondents submitted that, forgetting the additional amount of Rs.100 said to have been paid by the BPM to the applicant, the branch office journal clearly showed the applicant's acknowledgement for having received Rs.800 on 25.9.1984. On the other hand the applicant's contention

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that he had repaid Rs.200 being unpaid money order amount on the same evening was unsupported by the acknowledgement of the BPM in the postman's book of the applicant. The fact that the BPM claimed to have paid the applicant Rs.900 on 25.8.1984 and not Rs.800 and the further statement of the BPM that he had made up the shortage of cash on 25.8.1984 from his own pocket and by borrowing from others and that he withdrew Rs.200 from the branch office balance on 29.8.1984 to repay moneys borrowed by him do not in any way affect the position that according to the available documents there was no proof of the applicant having repaid Rs.200 on 25.8.1984. This being so, the finding of the IO and the orders of the DA and the AA were perfectly legal.

4. We have considered the rival contentions very carefully. It is common ground that there was no eye witness to testify whether the applicant had repaid the sum of Rs.200 on 25.8.1984. ^{Viz. wa} The only evidence that is available to the IO was the statement of the BPM that the amount had not been paid and the applicant's assertion that he had paid the same. The IO relied on the statement of the BPM and the failure of the applicant to obtain the acknowledgement of the BPM in the postman's book for the alleged repayment. The applicant has an explanation for the absence of acknowledgement by the BPM on the postman's book viz. that the BPM was busy when the postman's book and the cash was handed over to him and asked the applicant to collect the postman's book later. It is not questioned that the entry of the balance of Rs.200 in the postman's book was made by the applicant on 25.8.1984. The IO states in his report that the applicant was careless in not obtaining the signature of the BPM in the book. The tenor of the report shows that the IO

found fault with the applicant for not being careful in obtaining the acknowledgement in the postman's book immediately and on that basis he held the applicant guilty of the charge. He has not recorded a clear finding that the applicant had not effected payment of Rs.200 on 25.8.1984 which was the gravamen of the offence. The statement of the BPM does indeed suffer from several inconsistencies. That he did not debit the alleged short payment of Rs.200 in the BOA on 25.8.1984 but only four days later on 29.8.1984 is a factor which militates against the charge for which the applicant was proceeded against. The BPM's statement that he had paid Rs.900 on 25.8.1984 to the applicant and not Rs.800 was in flat contradiction of the record in the journal. That the BPM should have made up the shortfall in cash from his own pocket or by borrowing from others when the shortfall is alleged to be due to the applicant's fault and that even on 29.8.1984 the BPM debited only Rs.200 and not Rs.300 to the UCR account clearly shows that his statement was unreliable. As pointed out by Shri Achar the BPM himself was proceeded against for the same shortage and his statement in the present inquiry was a self-serving statement. For all these reasons it seems to us that the statement of the BPM did not constitute legal evidence to hold the applicant guilty. In any event we are satisfied that no reasonable person would have come to the conclusion on the evidence available in this case that the applicant was guilty of the charge levelled against him and, therefore, the orders imposing the penalty of removal from service on the applicant and rejecting his appeal against that penalty were perverse and, therefore, illegal. We have, therefore, no hesitation in setting aside both the orders and directing the respondents

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to reinstate the applicant. The applicant will, however, not be entitled to back wages from the date he was removed from service till the date of his reinstatement.

5. In view of the above, we quash the impugned orders at Annexures A and B and direct the respondents to reinstate the applicant within one month of the date of receipt of this order. The applicant will not be entitled to any back wages for the period upto the date of his reinstatement.

6. The application is allowed. Parties to bear their own costs.

1 NOV. 1987
Sd/-
VICE CHAIRMAN

25/11/87

Sd/-
MEMBER (A) 25/11/87

- True copy -

bsv



R. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE