

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 8 AUG 1988

APPLICATION NO. 749 / 87(F)

W.P. NO. _____

Applicant(s)

Shri B.S. Subbaraya
To

Respondent(s)

V/s The Asst. Supdt. of Post Offices, Hassan
& another

1. Shri B.S. Subbaraya
Ex-EDMC
Mandalamane Post
Belur Taluk - 573115
Hassan District
2. Smt Bharathi Nagesh
Advocate
1/01, 6th Main, 4th Cross
Wilson Garden
Bangalore - 560 025
3. The Assistant Superintendent of
Post Offices
Hassan Division
Hassan - 573 201
4. The Superintendent of Post Offices
Hassan Division
Hassan - 573 201
5. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/~~INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 1-8-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 1ST DAY OF AUGUST, 1988.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And:

Hon'ble Mr. P. Srinivasan,

.. Member(A).

APPLICATION NUMBER 749 OF 1987

B.S. Subbaraya,
Ex-EDMC/DP
Mandalamane Branch Office,
Belur-Hassan
residing at Mandalamane Post
Belur Taluk 573 115.

.. Applicant.

(By Smt. Bharathi Nagesh, Advocate)

v.

1. Assistant Superintendent of
Post Office, Hassan.

2. Superintendent of Post Office,
Hassan Division, Hassan.

.. Respondents.

(By Sri M.S. Padmarajaiah, SCGSC)

This application having come up for hearing this day, Hon'ble Vice-Chairman made the following:

O R D E R

In this application made under Section 19 of the Administrative Tribunals Act, 1985 ('the Act') the applicant has challenged order No. F1/Misc.3/84-85 dated 31-3-1987 (Annexure-B) of the Superintendent of Post Offices, Hassan Division, Hassan and the Appellate Authority ('AA') and the order No. Inq/ED-3/84-85 dated 5th November, 1986 (Annexure-A) of the Assistant Superintendent of Post Offices, Hassan Division, Hassan and the Disciplinary Authority ('DA').

2. At the material time, the applicant was working as an Extra Departmental Mail Carrier with powers of delivery of postal articles ('EDMC/DP') of Mandalmane Branch Post Office, Belur Taluk of Hassan District governed by the Posts and Telegraphs Departmental Agents

(Conduct and Service) Rules, 1964 ('Rules'). When he was so working at Mandalmane, the DA initiated disciplinary proceedings against him under the Rules and levelled three charges against him which read thus:

ARTICLE-I

That Sri b.S.Subbaraya while working as EDMC/DP from 15-2-1984 to 13-8-1984 has misused his official position by opening/reading the contents of the letters addressed to Sri M.S.Manjunathaiah of Mandalmane village and received at Mandalmane BO for delivery to the addressee and thereby failed to maintain devotion to duty as required by Rule 17 of P & T ED Agents (C & S) Rules, 1964.

ARTICLE-II

That the aforesaid official while working as EDMC/DP in the aforesaid office during the aforesaid period has refused to receive Belur (Hassan) MO No.4562/90 dated 7-3-1981 for Rs.50-00 for effecting payment for the period from 8-3-1984 to 13-3-1984 and caused unnecessary delay in payment of the said MO to the payee thereby failed to maintain devotion to duty as required by Rule 17 of ED Agents (C & S) Rules, 1964.

ARTICLE-III

That the aforesaid official while functioning as EDMC/DP at the aforesaid office on 7-7-1984 and on 11-7-1984 has evaded to give statement to complaint Inspector, Divisional office, Hassan who was entrusted with a public complaint by SPO's Hassan to make enquiries in the case and thereby disobeyed the orders of the SPO's Hassan.

Since the applicant denied these charges, one Sri K.Ramanathaiah, an Inspector of Post Offices was appointed as the Inquiry Officer ('IO') who held a regular inquiry and submitted his report to the DA, in which he held the applicant guilty of charge No.3 only.

3. On a consideration of the report of the Inquiry Officer, the evidence on records, the DA by his order dated 5-11-1986 (Annexure-A) disagreed with the findings of the IO on charge No.1 and concurred with his findings on Charge No.3 and imposed on the applicant the penalty of dismissal from service with immediate effect. Aggrieved by this order of the DA, the applicant filed an appeal before the AA, who by his order dated 31-3-1987 dismissed his appeal however, disagreeing with the finding of the DA on charge No.1. Hence, this application.



4. The respondents have filed their reply and have produced their records.

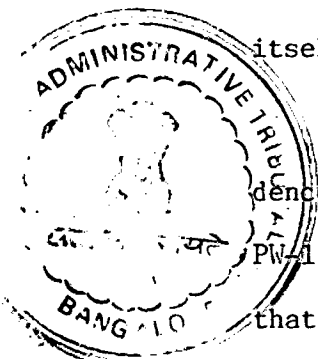
5. Smt. Bharathi Nagesh, learned counsel appearing for Smt. Shantha Challappa, who appears for the applicant, contends that charge No.3 which was the only charge that had survived against her client, had not been proved and that in any event the punishment of dismissal from service on him was totally disproportionate to the gravity of the offence, if any, committed by him.

6. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents sought to support the impugned orders.

7. We have earlier re-produced charge No.3, with which only we are now concerned. On this charge, there was oral and documentary evidence. On an evaluation of oral and documentary evidence on record all the authorities have concurrently found that the applicant was guilty of this charge.

8. Every one of the submissions made by Smt. Bharathi Nagesh really touch on the appreciation of evidence and do not attract a case of 'no evidence' or a case in which no reasonable man would have ever reached those conclusions. As ruled in more than one case, this Tribunal cannot act as a Court of appeal, re-appreciate the evidence and come to a different conclusion. On this conclusion itself, this challenge of the applicant cannot be upheld.

9. Smt. Bharathi Nagesh has taken us through the material evidence on charge No.3. An examination of the same and that of PW-12 on whose evidence considerable criticism was mounted, discloses that there was evidence on charge No.3, on which it was open to the authorities to hold that the applicant was guilty of charge No.3.



10. On any view, we see no merit in this contention of Smt. Bharathi Nagesh and we reject the same.

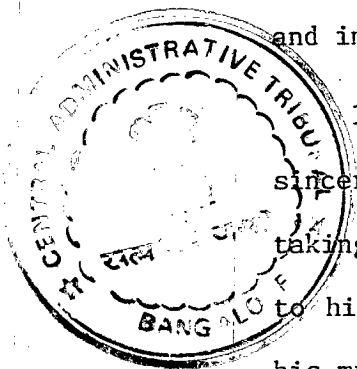
11. We have earlier set out the nature of the charge and the punishment imposed against the applicant.

12. At the highest, the charge levelled against the applicant is one of dereliction of duty and does not reveal any serious lapse of moral turpitude. We are of the view that the gravity of the offence only justified the minimum punishment of removal from service, which does not act as a disqualification for future appointment. We, therefore, consider it proper to so modify the punishment imposed on the applicant.

13. On the initiation of disciplinary proceedings, the applicant had been 'put off' from duty from 14-8-1984. In PETER J D'SA v. SUPERINTENDENT OF POST OFFICE, UDUPI AND OTHERS (A.No.553 of 1987 etc. decided on 15-7-1988) we have struck down Rule 9(3) of the Rules and directed Government to frame new set of Rules and regulate payment of subsistence allowance for the period an EDA is 'put off' from duty. The applicant is entitled for the benefit of our order in Peter J D'sa's case for the period he was 'put off' from duty.

14. We have upheld the guilt of the applicant on charge No.3 and imposed on him the lower punishment of removal from service.

15. Before us the applicant has filed a memo stating that he sincerely regrets for his lapses in his official duties and undertaking to perform his duties with devotion to duty and obedience to his superiors. We are convinced that the applicant has realised his mistake and is repentant. He is also keen on continuing in service if another opportunity is given to him. In these circumstances, we consider it proper to commend to the Department to consider the case of the applicant for a fresh appointment at Mandalmane Branch Office



or any other nearby office when a vacancy occurs in the near future.

We do hope and trust that the authorities will accommodate the applicant when a vacancy occurs in the future.

16. In the light of our above discussion, we make the following orders and directions:

- a) We uphold the guilt of the applicant and dismiss this application to that extent.
- b) We allow this application in part and modify the punishment of dismissal from service to one of removal from service from 5-11-1986 which will not be a bar for a fresh appointment. We direct the respondents to regulate the period of suspension of the applicant and payment of subsistence allowance thereto in terms of our order in Peter J D'sa's case.

17) Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.



Sd/-

VICE-CHAIRMAN.

1/8/1988

Sd/-

MEMBER(A)

TRUE COPY

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE