

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01131/2014

Thursday, this the 9th day of August, 2018.

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

M.K. Lohithakshan,
S/o. Kunjikandan, Aged 59 years,
Working as GDSMD, (removed from service),
Padinjare Vemballur Branch Post Office,
Edavilang SO, Kodungallur, Irinjalakuda Postal Division,
Residing at Miryil House, Padinjare Vemballur P.O.,
Kodungallur, Thrissur. **Applicant**

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

- 1 Union of India,
Represented by the Secretary to Government of India,
Ministry of Telecommunications, Department of Posts,
New Delhi – 110 001.
- 2 The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
- 3 The Superintendent of Posts,
Irigalakkuda Division, Irinjalakkuda.
- 4 The Assistant Superintendent of Posts,
Postal Stores Department, Adhoc Recruiting Authority,
Thrissur – 680 004.
- 5 The Post Master General, Central Region,
Kochi – 682 020. **Respondents**

(By Advocate – Mr. P.G. Jayan, ACGSC)

This Original Application having been heard and reserved for orders on 31.07.2018, the Tribunal on 09.8.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member:

In this O.A. the applicant seeks the following reliefs:

- i. To call for records leading to Annexure A1 and Annexure A2 and quash the same;
- ii. To direct the respondents to reinstate the applicant in service with effect from the date on which he was removed from service with all consequential benefits including back wages;
- iii. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and
- iv. To grant the costs of this Original Application.

2. The applicant joined as GDS Mail Career on 23.02.1981. On 06.02.2009 he was put up off duty and DE was initiated against him under Rule 10 of GDS (Conduct and Employment) Rules, 2001 by issuing Charge Memo by Inspector of Posts, Kodungallur. On 06.12.2010 a fresh charge sheet was, canceling the earlier, issued by Adhoc Appointing Authority and inquiry was conducted. Applicant submitted written brief of defense. On 29.11.2013 Enquiry Report was submitted after giving copy to the Applicant and he made representation against its findings and ultimately on 07.08.2015 penalty order from removal of service has been passed. On 02.09.2013 applicant made an appeal which repeated by the Appellate Authority on 28.11.2013.

3. The charge against the applicant was as follows:

Article I – Sri. M.K. Lohithakshan, while working as GDSMD, Padinjare Vemballur on 14.11.2008, failed to effect delivery of an ordinary letter addressed to Dhanya P.P., daughter of P.S. Premadasan, Panangattu House, P. Vemballur PO, effected delivery only on 26.11.2008, furnished wrong remarks during the intervening period and thereby violated the provisions of Rule 115(1) of Postal Manual Volume VI part III, 6th Edition and thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

Article II: Shri M.K. Lohithakshan, while working as GraminDak Sevak Mail

Deliverer, Padinjare Vemballur on 2.2.2009 failed to obey orders of Inspector of Posts, Kodungallur Sub Division vide memo No. BO/P.Vemballur dated 31.1.2009, relieving him from mail conveyance duties and rearranging duties of the GDSMD of the office with effect from 2.2.2009, and thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001.

Article III: Sri M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer, Padinjare Vemballur on 2.2.009, misbehaved with his superiors, Sri K.K.Bahuleyan and Sri C. Balakrishnan, Mail Overseers of Kodungallur Sub Division on a visit to Padinjare Vemballur, made derogatory remarks on officers of the department and left the office without permission, thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules 2001.”

4. By filing the present O.A. applicant raised following grounds. There is no legally admissible evidence on record. He was put off duty without following the prescribed and proper procedures. Penalty imposed does not commensurate with the charges. There is no corroboration of statement of PW5. And it is a case of no evidence.

5. Reply statement has been filed by taking the grounds that there is ample oral and documentary evidence against the applicant. The Authority has taken into consideration of all facts due opportunities were given to the applicant and appeal was rejected with proper application of mind.

6. Respondents have cited the judgement of Allahabad High Court in the case of *Union of India and Ors vs. Rajesh Kumar Singh and Anr. In Writ A No. 39425 of 2006 dated 31.3.2014* in which it is held that Rule 132 of the Postal Manual provides for penalties for neglect of duty, which provides that if a Postman is found guilty of habitually loitering on his beat, or employing the agency of unauthorised person, or persons unconnected with the Post Office to deliver articles entrusted to him for delivery, or otherwise neglecting his duty, he would be liable to removal or prosecution in a court

of law under the Post Office Act.

7. There are three Article of Charges against the applicant. He failed to effect the delivery of an ordinary letter, while working as GDS on 2.2.2009 failed to obey orders of Inspector of Posts. He misbehaved with his superiors, K.K.Bahuleyan and Sri C. Balakrishnan, Mail Overseers made derogatory remarks.

8. As per the principle enunciated the courts can interfere with the findings recorded by the inquiry officer if they are perverse, or if there is any error apparent on the face of record.

9. We have carefully scanned the report of the enquiry officer in order to ascertain whether the findings recorded by him are based on evidence, much less legally admissible evidence. It is needless to say that if the findings are based on no evidence or based on evidence which is not legally admissible, certainly those findings can be termed as perverse. Suffice it to say, perverse findings have no legal sanctity. It is a settled principle of law that suspicion however strong shall not dispense with the legal proof either in criminal cases or departmental enquiries. Unlike in criminal cases, disciplinary authority has to prove the misconduct of the delinquent by preponderance of probabilities even though the rigour of principles of the Indian Evidence Act is not strictly applicable to domestic enquiry.

10. During the course of enquiry the PW5 T.C. Pushapavathy stated:

“The changed GDS is working in GDS II beat. He was entrusted with the mail conveyance duty also. During January and February 2009. He had also worked in place of Subin.

Xxxx

Those articles were meant for delivery by GDS MD No.1

xxxx

On that day Mail Overseer has not taken the statement of Sri Subin.

Xxxx

So many articles were pending in GDS M.D.I beat. It was submitted by me to interchange the beat. I am not remembering about the interchange of Smt. Biji working as GDS. MD.I and the substitute Sri Subin. Even often seeing the workload in GDS MD.I had, the changed GDS did not express his unwillingness to clear the pendency.

Xxxx

Smt. K.T.Biji, GDS MD.I has returned the article addressed to Smt. Dhanya PP (PW.1) on 22.11.2008 by entering remark “not known”

xxxx

They have not taken statement of CGDS.

Xxxx

The C GDS replying loudly to Sri Bahuleyan.

PW 4 K.P.Nandakumar.:

I was not aware of the fact that the delay in delivering letter to my house was due to CGDS.

Xxxx

The CGDS said he has enough work load and could not deliver letter meant for other beat and let it delivered by others. Later he intend to abuse Mail Overseer . I did not intend to say that here.

P.W. 7 C. Balakrishnan :

“ I asked BPM Pushpavathy that whether the EKB P/14 has been implemented? She told that the order could not be implemented. “

11. We have to examine in the light of depositions made by the witnesses before the Inquiry Officer in order to find out whether a reasonably prudent person can hold that the applicant is guilty of the charge. It can be seen from the deposition of PW.5 that the applicant was given additional workload of GDS, MD.I in order to clear the backlog during the said period whereas his original post of working was GDS MD II. It is evident that applicant is performing duties with all willingness to the additional charge given to him. This is escaped the notice of Inquiry Officer. The G.D.S. MD I Beat was allotted to Mrs.Biji and her assistant Shri Subin. They were neither charged

for lapses nor examined in the inquiry even their statements were not recorded in order to find out the truth. As per the statement made by the P.W.5 the ordinary letter was delayed by Mrs. Biji. She has handed over the letter to P.W. 5 on 22.11.2008 and the applicant has delivered the same on 24.11.2008. Even if there is a delay it is because of G.D.MD I not because of applicant. Thus facts which are *prima facie* judiciously noticeable by the Inquiry Officer has been ignored.

12. Let us examine the finding on the second charge that the applicant has misbehaved with the Overseers/superiors. None of the witnesses examined during the course of inquiry has deposed that the applicant has misbehaved with his superior. It is not understood by this Tribunal, how can a charge held to be proved of misbehaviour in the absence of proof against the applicant in the inquiry. As per the deposition of P.W.5 the applicant was replying to Overseer loudly. That does not prove that applicant has misbehaved with his superior. It is quite obvious if somebody has given extra load of work which he was performing willingly and being accused of non performance he would put forth forcefully his version in support of his defence. This Tribunal is not convinced the way the charge is proved against the applicant by the Inquiry Officer.

13. It is also submitted by P.W. 5 that change of Beat was never implemented as deposed by P.W. 4 Nandakumar. He has also stated on being asked charged GDS abused the Overseer his superior. In reply to this P.W. 4 has given answer in the negative. There is no other material before the Inquiry Officer in order to find out that the applicant has misbehaved with his superior but still he has held that the charge is proved against the

applicant. It is a perverse finding according to this Tribunal in the light of the settled law by the Hon'ble Apex Court in the case of in Commissioner of Income-tax, Bombay & Ors. v. Mahindra & Mahindra Ltd. & Ors., AIR 1984 SC 1182, wherein it was held that various parameters of the Court's power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole *catena* of decisions. The Hon'ble Apex Court held further as :

"It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same."

14. All these aspects indicates to one direction that the applicant is made a scape-goat and certain persons responsible for lapses were shielded by the officials of the respondent department. All these things are happening under the nose of the Inquiry Officer but he is keeping a reticence view. It seems the entire enquiry was based on surmises and conjectures. There is no iota of evidence by the Presenting Officer or by the department against the applicant. Still charges stated to have been proved against him. It thus happened always the axe falls on the lower rung of people/staff as happened in the present case. Lesser said is best about delay of delivery of letter by postal department everybody has bears the brunt at some point of time in the life. But irony is the person who is performing additional duties by taking additional load has been punished by the respondent. Instead of finding out the causes of delay and giving solutions such as by adopting new technology giving more power the department has chosen to punish the lower rung of staff.

15. Our above view has been fortified by the decisions rendered by the Hon'ble Apex Court in the following cases:

In the case of *Chairman-cum-Managing Director, Coal India Limited vs. Ananta Saha* 1995 (II) SLR 751, wherein the Hon'ble apex Court held as under:

"32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls."

In *Sher Bahadur vs Union Of India & Ors* 1976 (2) SCC 868

"It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence."

In *Kuldeep Singh vs The Commissioner Of Police & Ors* (1999) 2 SCC 10

"It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority. "

Again in the case of *Sri Bishnu Prosad vs. Union of India* 1955 (1) SCR 1104, wherein the Calcutta High Court held as under:

"9. It is now well-settled that the finding cannot be at variance with the charge. The petitioner was not charged with the theft, but for neglect of duty as he failed in detecting the theft, whereas the Enquiry Officer found him guilty of a new charge not levelled

against him that he himself was responsible for theft. According to the Enquiry Officer such theft took place in connivance inter alia with him.

10. Accordingly the findings of the Enquiry Officer are liable to be set aside and quashed. If the findings cannot be sustained subsequent proceedings based on such findings cannot survive or be sustained.”

16. In regard to this argument that punishment is not commensurate with the charges and it is a case of no evidence has been substantiated in toto. In the facts and circumstances of the case and also principle enunciated in the cited judgements, this Tribunal is of the view that the impugned order of Removal from service to the applicant is liable to be set aside and is hereby set aside. Ordered accordingly. The applicant shall be reinstated in service forth with. He is entitled to all back-wages with all consequential benefits like arrears etc. The order shall be implemented within thirty days from the date of receipt of a copy of this order.

17. O.A. is allowed No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

List of Annexures of the Applicant

Annexure A-1 - A true copy of the penalty order Memo No. ASP (Ptg)/ADA/1/2012 dated 07.08.2013.

Annexure A-2 - A true copy of appellate order No. BB/Appeal/03/2013-14 dated 28.11.2013 issued by the 3rd respondent.

Annexure A-3 - A true copy of the Memo No. PM/ADA/MKL dated 02.12.2010.

Annexure A-4 - A true copy of Memo No. PM/ADA/MKL dated 06.12.2010 issued by the Adhoc Appointing Authority.

Annexure A-5 - A true copy of written brief dated 06.01.2013 submitted by the applicant.

Annexure A-6 - A true copy of the final order dated 08.04.2013 in OA 27/2012 on the files of this Honourable Tribunal.

Annexure A-7 - A true copy of inquiry report dated 22.03.2013.

Annexure A-8 - A true copy of letter No. ASP(Ptd)/ADA/1/2012 dated 29.04.2013.

Annexure A-9 - A true copy of written representation dated 12.06.2013 made by the applicant before the Adhoc Disciplinary Authority.

Annexure A-10 - A true copy of the Appeal dated 02.09.2013 submitted by the applicant.

List of Annexures of the Respondents

Annexure R1 - True copy of Exhibit P-13 (with English Translation).

Annexure R2 - True copy of Exhibit P-14.

Annexure R3 - True copy of deposition of PW-5 (with English Translation).

Annexure R4 - True copy of deposition of PW-6 (with English Translation).

Annexure R5 - True copy of deposition of PW-7 (with English Translation).

Annexure R6 - True copy of deposition of PW-8 (with English Translation).

Annexure R7 - True copy of deposition of PW-3 (with English Translation).

Annexure R8 - True copy of deposition of PW-4 (with English Translation).
