

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00498/2018**

**Thursday, this the 29<sup>th</sup> day of November, 2018**

**CORAM:**

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

K. Sunilkumar, aged 53 years, S/o. P. Karunakaran,  
 Postal Assistant, Vadakkevila PO, Kollam-691010,  
 residing at B-10, BSNL Staff Quarters, Thirumullavaram,  
 Kollam – 691 012. .... **Applicant**

**(By Advocate : Mr. Shafik M.A.)**

**V e r s u s**

1. Union of India, represented by the Chief Post Master General, Kerala Circle, Trivandrum – 695 033.
2. The Director of Postal Services (Head Quarters), O/o. The Chief Post Master General, Trivandrum – 695 033.
3. The Senior Superintendent of Post Offices, Kollam Division, Kollam – 691 001. .... **Respondents**

**(By Advocate : Mr. S.R.K. Prathap, ACGSC)**

This application having been heard on 21.11.2018 the Tribunal on 29.11.2018 delivered the following:

**O R D E R**

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicant are as under:

“(I) To call for the records leading to Annexures A-1, A-2 and A-3 and set aside A-1, A-2 and A-3 orders;

(II) To declare that the period of suspension of the applicant from 10.12.2010 to 10.6.2011 is illegal and direct the 3<sup>rd</sup> respondent to treat the period of illegal suspension as duty for all purposes and also to pay full pay and allowances for the period;

(III) To issue appropriate direction or order which this Hon'ble Tribunal deems fit, just and proper in the circumstance of the case;

(iv) To award costs to the applicant."

2. The brief facts of the case are that the applicant was working as Postal Assistant with the respondents and is aggrieved of rejecting his appeal against the penalty order imposed for reduction of pay by three stages from Rs. 10,190/- to Rs. 9,110/- in the pay band of Rs. 5,200-20,200/- with Grade Pay of Rs. 2,400/- for a period of one year with effect from 1.10.2016. He was subjected to departmental proceedings and following three charges were framed against him:

**“Article-I -**

That the said Sri K. Sunilkumar while working as PA, Thirumullavaram SO for the period from 1.7.2007 onwards had even though shown Rs. 78120/- as the total of RD collections of Thirumullavaram SO in his Hand to Hand receipt book on 16.10.2009, but as per LOT and RD journal dtd. 16.10.2009 a sum of Rs. 68120/- only was accounted on 16.10.2009 at Thirumullavaram SO. Sri K. Sunilkumar, PA failed to prepare RDLOT on 16.10.2009 and initial it and failed to tally the entry in the LOT with that in the SO account and in the Hand to Hand receipt book. Sri Sunilkumar, PA also failed to make RD ledger entries on 16.10.2009. As a Joint custodian for cash, valuables and accounts of the SO, Sri Sunilkumar failed to ensure the correctness of accounts sent from the SO to the HO on 16.10.2009, even though he had initiated in it.

By the above act Sri K. Sunilkumar, now PA, Thevally while working as PA Thirumullavaram violated Rule 46B(1) and 120 of PO SB manual Volume-I and Rule 84(B) for Postal Manual Vol. VI Part III and also failed to maintain devotion to duty in contravention of Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.

**Article-II -**

That the said Sri K. Sunilkumar while working as PA Thirumullavaram SO for the period from 1.7.2007 onwards had even though shown Rs. 64750/- as total of RD collections of Thirumullavaram SO in the Hand to Hand receipt book on 28.10.2009 but as per LOT and RD Journal dated 28.10.2009 an amount of Rs. 54750/- only was accounted on 28.10.2009 at Thirumullavaram SO. Sri K. Sunilkumar, PA failed to prepare RD LOT on 28.10.2009 and initial it and failed to tally the entry in the LOT with that in the SO account and in the Hand to hand receipt Book. Sri K. Sunilkumar, PA also failed to make RD ledger entries on 28.10.2009. As a joint custodian for cash valuables and accounts of the SO Sri Sunilkumar, PA

failed to ensure the correctness of the accounts sent from the SO to the HO on 28.10.2009, even though he had initiated in it.

By the above act Sri K. Sunilkumar, now PA, Thevally while working as PA Thirumullavaram violated Rule 46 B (1) and 120 of PO SB manual Volume-I and 84(B) of Postal Manual Vol VI Part III and also failed to maintain devotion to duty in contravention of Rule 3(1)(ii) of CCS Conduct Rules 1964.

Article-III -

That the said Shri K. Sunilkumar while working as PA, Thirumullavaram SO for the period from 1.7.2007 failed to perform his duties as RD PA, properly thereby facilitating Sri S. Lalu who was the SPM at the SO during the period to make huge irregularities in RD deposit tendered by MPKBY agent Smt. Santhamma Amma and Smt. Padmakumary thereby causing a loss to the Department amounting to Rs. 241722/- (Two lakh forty one thousand seven hundred and twenty two only) being the amount of penal interest for the amount defrauded by the SPM. The actual amount only was credited by the said Sri Lalu in Government accounts.

It is therefore, imputed that Sri K. Sunilkumar while working as PA Thirumullavaram SO for the period from 1.7.2007 failed to maintain devotion to duty in contravention of Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.”

3. By filing the present Original Application he has raised and challenged the impugned order on grounds that there is no legally admissible evidence on record to punish him. The violation of Rule 46(B) (1) and 120 of Post Office Savings Bank Manual Volume I and Rule 84(B) of Postal Manual Volume VI Part III cannot be attributed against him as the evidence led by him during the enquiry that he has prepared a list of transactions (LOT) where correctly prepared by him under the signature and amount so collected by him were duly recorded in hand to hand receipt book and was transferred to Station Postmaster for depositing the same with Head Office. This fact has never been controverted. The rule cited by the respondents in Annexures A4 & A5 that he should take the amount retained by the Station Postmaster to the Head Office is not maintainable. Charge

No. 3 is imaginary and the element of penal interest worked out as Rs. 2,41,722/- should have been realized from the principal offender i.e. the Station Postmaster Shri S. Lalu and this liability cannot be fastened on the applicant herein being a Postal Assistant. There is no evidence placed on record that applicant had ever entrusted the work to any one. It is further stated that PW-6 who conducted the preliminary investigation found that Shri S. Lalu, SPM is solely responsible for the fraud in her enquiry report. She further submitted that applicant is not at all responsible for non-credit of penal interest. She came to know that the restoration sanction was issued only after the defrauded amount was credited by Shri S. Lalu. At that stage also the question of recovery of penal interest did not come up. Lastly it is submitted that the copy of the enquiry report has not been furnished to the applicant for preparation of his defence which is in violation of the rules of natural justice.

4. Notices were issued to the respondents. They entered appearance through Shri S.R.K. Prathap, ACGSC who contended that applicant has not approached the revisional authority against the penalty imposed by the disciplinary authority and upheld by the appellate authority. Thus he has not exhausted the channel of revision petition. Hence this OA is not maintainable. It is further submitted that the applicant is a subsidiary hand to the said fraud committed by the Station Postmaster. The applicant was placed under suspension from 10.12.2010 vide memo dated 2.12.2010. A detailed enquiry was held and adequate opportunity was given to the applicant to defend his side.

5. Heard Shri Shafik M.A. learned counsel appearing for the applicant and Mr. S.R.K. Prathap, ACGSC learned counsel appearing for the respondents and appreciated the legal position placed before us. Perused the records.

6. We have carefully scanned the copy of the enquiry report submitted by the inquiry officer in order to ascertain whether the findings recorded by him are based upon the evidence or not or that whether the evidence adduced is legally admissible or not ?

7. It is a settled principle of law that suspicion however strong shall not dispense with the legal proof either in criminal cases or departmental inquiries. 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.

During the course of enquiry PW-1 Smt. Santhamma Amma, MBPBY Agent, Thirumullavaram was examined and she identified Exhibit P1 and deposed that it was the statement given by her before IP Kollam North on 11.2.2011. She also identified Exhibit P2 and deposed that it was the Aslaas 6 submitted by her on 16.10.2009. On cross examination she stated that the RD list with cash was handed over to the SPM or to the Postal Assistant present in the office. She also added that she had given statement in the inquiry against Shri S. Lalu and had no doubt in the work of Sri K. Sunilkumar.

Smt. Padmakumary Amma, MPKBY Agent, Thiurmullavaram, PW-2 was also examined and she identified

Exhibit P3 and deposed that it was the statement given by her on 22.9.2010 before IP (PG) Kollam Division. She also identified Exhibit P4 and deposed that the document shown to her was the Aslaas 6 submitted by her on 28.10.2009. On cross-examination she stated that she used to hand over the RD list with cash to the SPM on some days. It is also stated that she had given statement in the inquiry against Shri S. Lalu and had no doubt in the work of Sri K. Sunilkumar.

Smt. N. Beena, OS, Kollam Division, DW-1 was examined and she identified the MDW of Thirumullavaram SO (Exhibit D1) and made deposition that there is no fault in doing the work of the PA by the SPM for the smooth functioning of the office. She also identified the final order dated 25.2.2013 issued by SSPOs, Kollam Division to Shri S. Lalu as Exhibit D2 and the charge sheet dated 29.2.2012 as Exhibit D3.

Smt. G. Sobhana, IP (PG), Kollam Division, PW-5 was examined and she deposed that she had recorded the statement of Smt. Padmakumary Amma, MPKBY Agent, Thirumullavaram in connection with the enquiry of non-credit of RD schedules by Shri S. Lalu, SPM, Thirumullavaram. In cross-examination she deposed that during course of inspection she had found the non-credit of RD schedules submitted by RD agents. She identified the SO daily account of Thirumullavaram dated 16.10.2009 as Exhibit P8 in which the RD id shown is Rs. 68,120/- with default interest of Rs. 74/-. RD LOT of Thirunullavaram SO dated 16.10.2009 (Exhibit P9) also shown the same amount of Rs. 68,120/- and Rs. 74/-. She also stated that she had recorded the statement of the applicant dated 5.2.2011 and marked as Exhibit P10.

PW-6 Smt. B. Lakshmi, ASP (LC)CO submitted that the applicant had not prepared Exhibit P9 and there was no signature of the applicant in Exhibit P9 and that the SPM could have substituted the same. PW-6 continued that there was

difference in RD deposit dated 28.10.2009. As per SO daily account of Thirumullavaram SO (Exhibit P11) dated 28.10.2009, total RD deposit is shown as Rs. 54,750/- w.e.f difference of Rs. 51/- instead of Rs. 64,750/- with difference of Rs. 81/-. RD LOT dated 28.10.2009 of Thirumullavaram SO (Exhibit P12) also revealed that there were difference in RD deposit in Exhibit P5, P6, P11 and P12 and signature of the applicant was not in Exhibit P12. **(emphasis supplied)**

Shri Suresh Kumar, PA, Kadakka, DW2 was also examined and he deposed that Shri Lalu had credited the defrauded amount in UCR at Thangassery SO.

**(emphasis supplied)**

Looking to these statements carefully it transpires that SPM Shri S. Lalu has committed the fraud in the Thirumullavaram SO for quite some time. The depositions of PWs and DWs show that the statements were against the SPM Shri S. Lalu only. The only thing which was used against the applicant is that he has admitted in the enquiry proceedings that the SPM used to prepare Recurring Deposit List of Transactions on some days due to work pressure and he never made any objection to it. Fact remains that on 2 recurring deposits in which difference of amount of Rs.10,000/- is found, his signatures were not there and it must have been substituted or replaced by the SPM who has to ultimately submit the same to the HO. The applicant had signed the SO daily account in his capacity as joint custodian without verifying the entries therein. On perusal of the records it also transpired that applicant was posted as PA to Thirumullavaram SO within five months after passing the PA examination. Therefore, he was not having enough experience in any branch. No prudent person can arrive at this conclusion after going to the evidence laid by the department before the Enquiry

Officer. Even it is assumed for the sake of arguments that that some Postal Assistants helped SPM Shri S. Lalu then why applicant alone is charged for the same and why other PAs were also not held for similar charges, it seems to us that the applicant is singled out and made a scape goat being newly posted in the said SO. Nobody has lead evidence in entire departmental proceedings that the fraud has been committed only within the period when applicant has been posted in Thirumullavaram SO as SPM was doing it for quite some time. DW-6 deposed on examination that applicant is not at all responsible for the non-recovery of penal interest from the real offender i.e. SPM. In answer to question in cross-examination PW-6 replied yes applicant is in no way connected with the non recovery of penal interest from Shri S. Lalu who has deposited the entire amount with the Department. One can see through naked eyes that there is no evidence lead in the enquiry against the applicant to the effect that applicant has helped the SPM Shri S. Lalu in fraud in RD.

8. It is only presumptions of the respondents based upon two entries of Rs. 10,000/- found from the list of transactions but at the same time signature of the applicant was not there. As per the deposition made by PW-6 it might have been that SPM had prepared the LOT on the dates on which accounts were manipulated and also substituted the list of transactions submitted by the applicant. The applicant has submitted that some time SPM was preparing the list of transactions and got his signature. If some work is taken over by the senior officer of the Branch then how can the subordinate employee can object to it and if he objects to it he can be

charged for non-cooperation and insubordination.

9. Thus the entire evidence lead in enquiry goes against SPM only and iota of evidence is not lead against the applicant. It shocks the judicial conscience to that any prudent person could come to the conclusion that the applicant has helped to commit fraud by Sub Postmaster himself. Let us see the judicial verdict in this regard:

In ***Chairman-cum-Managing Director, Coal India Limited vs. Ananta Saha*** 1995 (II) SLR 751, 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 the apex court held:

*"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 the apex court held:

*"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."*

10. On reading of the aforequoted judgments the legal position emerges that in case there is no evidence in the departmental proceedings the courts can interfere in it and the enquiry can be set aside. Mere facts that evidence adduced in the enquiry would not in principle satisfy the rule of sufficiency of evidence. After detailed examination of the charge levelled against the applicant we are of the view that the charges are nothing but is an afterthought to make applicant as a scape-goat for non-realization of the interest portion from the main defaulter. It is not understood by this Tribunal as to why at the time of settling recovery amount the interest portion have been left out and not recovered from the SPM, while he was working with them particularly when he has deposited the defrauded amount. There is a lapse on the part of some of the official dealing with it but that cannot be lead to fix unnecessary responsibility on some other employee who is having no fault.

11. We find that there is merit on the side of applicant and impugned orders are liable to be set aside. Thus, we hereby set aside the impugned orders at Annexures A1, A2 and A3 and direct that the period of suspension of applicant from 10.12.2010 to 16.6.2011 will be spent on duty for all purposes including pay and allowances and direct to restore back his pay and allowances at its original position. This order shall be implemented within a period of sixty days of receipt of a copy of this order.

12. The Original Application is allowed as above. There shall be no order as to costs.

**(ASHISH KALIA)  
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)  
ADMINISTRATIVE MEMBER**

**“SA”**

**Original Application No. 180/00498/2018**

**APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of the order No. ST/B-9/2016 dated 9.6.2017 issued by the 2<sup>nd</sup> respondent.
- Annexure A2** - True copy of the memo No. F1/04/2010-11 dated 25.5.2016 issued by the 3<sup>rd</sup> respondent.
- Annexure A3** - True copy of the memo No. F1/04/2010-11 dated 5.7.2013 issued by the 3<sup>rd</sup> respondent.
- Annexure A4** - True copy of the extract of Rule 84-A, 84-B & 84-C and Rule 99 of the Postal Manual Volume VI Part III.
- Annexure A5** - True copy of the extract of Rule 46 and Rule 120 of the Post Office Savings Bank Manual Volume I.
- Annexure A6** - True copy of the order Memo No. F1/04/2010 dated 10.12.2010 issued by the 3<sup>rd</sup> respondent.
- Annexure A7** - True copy of the appeal dated 5.5.2011 submitted by the applicant.
- Annexure A8** - True copy of the order No. ST/B-8/2010 dated 7.6.2011 issued by the 2<sup>nd</sup> respondent.
- Annexure A9** - True copy of the memo No. F1/04/2010-11 dated 30.10.2012 issued by the 3<sup>rd</sup> respondent.
- Annexure A10** - True copy of the representation dated 15.11.2012 submitted by the applicant.
- Annexure A11** - True copy of the testimony of the witness in the case.
- Annexure A12** - True copy of the written brief dated 21.9.2015 submitted by the presenting officer.
- Annexure A13** - True copy of the inquiry report issued as per letter No. F1/04/2010-11 dated 19.11.2015.

**Annexure A14** - True copy of the appeal dated 13.7.2016 submitted by the applicant.

**Annexure A15** - True copy of the written brief dated 5.10.2015 submitted by the applicant.

**RESPONDENTS' ANNEXURES**

**Annexure R1** - True copy of the minutes of the suspension review committee dated 7.3.2011.

**Annexure R2** - True copy of deposition taken on 28.4.2016 of PW6.

**Annexure R3** - True copy of acknowledgment card showing the receipt of the registered letter by the applicant.

-X-X-X-X-X-X-X-X-