

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00147/2018

DATED THIS THE 27th DAY OF NONEMBER, 2018

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER

B.E.Manu,
S/o B.M.Eshwara,
Aged 42 years,
Ex-GDS Packer,
(now dismissed from services),
Residing at Kuttandi Village & Post,
Virajpet-571 218.

... Applicant.

(By Advocate Shri A.R. Holla)

Vs.

1. Union of India,
Secretary,
Department of Posts,
Dak Bhavan,
New Delhi-110 001.

2. The Superintendent of Post Offices,
Kodagu Division,
Madakeri-571 201.

3. The Assistant Superintendent of Post Offices (HQ),
Kodagu Division,
Madakeri-571 201.

... Respondents.

(By Advocate : Shri K. Dilip Kumar)

ORDER

(HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER)

The case of the applicant is against (a) Memo No. ADA/ASP/2/6-07 dated 26.02.2008 (Annexure A-4) issued by the respondent No.3 dismissing the applicant from service and (b) Order No.F3-02/06/07/Appeal dlgs dated 28.04.2008 (Annexure A-6) rejecting the appeal of the applicant thereby upholding the order of penalty imposed by the Disciplinary Authority. The

applicant has argued that he has been acquitted in the criminal proceedings against him and hence the charge of stealing the cheque book from the letter box and giving it to his friend (who later presented one of the cheque to withdraw Rs. 2000/- from the Bank) is unsubstantiated.

2. The respondents have replied that the charge against the applicant was proved in a disciplinary enquiry conducted against him. The standard of proof in a disciplinary enquiry is different and less stringent from the standard of proof required for conviction under a criminal proceeding. The applicant has, in his written statement dated 12.08.2006, recorded by the Inspector of Posts, confessed to removing the cheque book while clearing letter box and admitted having given it to his friend.

3. After going through the pleadings and hearing the arguments of the Counsels, we find that the applicant has been punished after being found guilty of removing a cheque book from the letter box and giving it to his friend, who forged the signature of the depositor and withdrew Rs. 2000/- from the Bank. It is true that the applicant has been exonerated by the Trial Court of charges Under Sections 379, 419, 420 r/w 34 of IPC. However, there is no denying the legal position that the standard of proof for conviction under a criminal charge is stricter than the standard of proof required for a disciplinary proceeding. Here we quote the most relevant portion of the judgement in Criminal Case No. 1096/2007 against the applicant and another which will make it clear that acquittal of the applicant was mainly on ground of contributory negligence by others and because of investigating officer not doing their job properly. Para 24 of the judgement reads as follows:

“24. The court is of the conclusive opinion that the Bank Manager, who ought to have sent the cheque book of the customer through registered post to UAE sent through an ordinary post, there is negligence on the part of cheque verifying authority i.e Cw.4, the said

negligent act has been admitted by them, recovery against accused not proved. The investigating officer not complied the request of FSL department and collected admitted hand writings. Hence, there is no report by the FSL department. Under all the doubtful circumstances, there is no sufficient evidence to hold accused guilty for the offences charged against them. Hence, the benefit of doubt ultimately extended towards accused persons. Hence, for the negligence of the Bank, accused persons cannot be held guilty. Hence, under all the circumstances I answered point No.1 and 2 in the "NEGATIVE".

4. As is very clear from the above quote, the applicant who was the 2nd accused person in the case got the benefit of doubt because of the Bank's negligence in sending the cheque book through ordinary post and for not getting the handwriting checked properly. The written statement (Annexure R-1) by the applicant before the Inspector of Posts, Virajpet Sub Division which amounts to an admission of guilt, leaves no doubt about the applicant's complicity in the removal of cheque book from the letter box which ultimately led to the alleged forgery and fraudulent withdrawal of Rs. 2000/- from the Bank. The plea of the applicant that this statement was not voluntary and has no witnesses does not make it of any less evidentiary value, especially when enough corroborative evidence was available before the disciplinary authority, about the applicant's role in the alleged infraction.

5. During the course of arguments, the Counsel for the applicant also questioned the English translation of Annexure R-1. He was given an opportunity to submit what he considered to be the correct translation. We find on a plain reading of the 2nd paragraph of the statement in Kannada version, that there is no significant difference in the translated copy which would make us reach any conclusion other than that the applicant has admitted taking the cheque book out of the letter box and handing it over to his friend. This is, by any standard, a serious breach of duty by a postal staff and, therefore, the punishment given to him is very much in line with the severity of the infraction.

6. The O.A. is, therefore, dismissed. No costs.

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

(DR.K.B.SURESH)
JUDICIAL MEMBER

Cvr..

Annexures filed by applicant in OA No. 147/2018:

1. Annexure A1 A Copy of the Memo dated 29.12.2006
2. Annexure A2 A copy of the Inquiry report dated 5.1.2008
3. Annexure A3 A copy of the representation dated 22.1.2008
4. Annexure A4 A copy of the order dated 26.2.2008
5. Annexure A5 A copy of the appeal
6. Annexure A6 A copy of the order dated 28.4.2008
7. Annexure A7 A copy of the order dated 25.8.2008 in OA No.354/2008
passed by CAT, Bangalore Bench
8. Annexure A8 A Copy of the judgment dated 5.12.2017 in CC No.1096/2007
passed by Prl. Civil Judge & JMFC, Virajpet.

Annexure with reply statement :

1. Annexure R1 A copy of Written Statement of applicant.