

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00660/2015

Friday, this the 29th day of March, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, ...JUDICIAL MEMBER

Shri K.B.Satheesh Kumar,
Aged 40 years,
S/o late K.K.Balan,
Ex GDS BPM Edassery BO,
in account with Talikulam SO,
Residing at Kizhakkoot House,
Edassery PO, Talikulam – 680 569.
Thrissur District.

....Applicant

(By Advocate Mr.Shafik M.A.)

Versus

1. The Union of India represented by the Chief Postmaster General, Kerala Circle, Thiruvananthapuram-695 033.
2. The Director of Postal Services, Central Region, Kochi – 682 020.
3. The Senior Superintendent of Post Offices, Thrissur Division, Thrissur – 680 001.

(By Advocate Mr. EN.Hari Menon, ACGSC for Respondents)

This application having been heard on 26th March, 2019, the Tribunal on 29th March, 2019 delivered the following :

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ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.660/2015 is filed by Shri K.B.Satheesh Kumar, Ex GDS BPM, Edassery BO , against the order of penalty imposed upon him by the 3rd Respondent, removing him from service. He seeks the following reliefs:

- (I) To call for the records leading to Annexures A1 to A8 and set aside A1 and A2 orders;
- (II) To declare that the applicant herein is entitled to be reinstated in service with all attendant benefits;
- (III) To issue appropriate direction or order which this Hon'ble tribunal deems fit, just and proper in the circumstances of the case.

And

- (VI) To award costs of this applicant.

2. The applicant was appointed as Extra Departmental Branch Postmaster (renamed as GDS BPM) w.e.f. 15.07.1997 at Edassery Branch Post Office under the Thrissur Postal Division. He was placed under 'put off duty' w.e.f. 11.12.2009 by the Assistant Superintendent Posts, Thrissur Sub-Division. Disciplinary action was initiated against him as per memorandum including the Statement of Articles of Charges dated 23.05.2012 (Annexure A1) issued under Rule 10 of GDS (Conduct and Engagement) Rules, 2011. There were three Articles mentioned under the imputations of misconduct in support of the Articles of Charges. The first Article referred to delay in crediting VP amount of Rs.819/-. During enquiry by Assistant Superintendent Posts,

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Thrissur, it was found that VPL No.4379 of Irinjalakuda had been received at Edassery on 20.06.2009 and had been delivered only on 24.06.2009. The applicant who had received the amount on 24.06.2009 credited the same into Government account only on 30.06.2009. Under Article-II it was alleged that there had been delay in credit of VP amount of Rs.630/- in respect of Kamalapur VPL No.234. The applicant had effected delivery of the article on 13.11.2009 to the addressee, but credited the amount in the Post Office account only on 19.11.2009. Under Article-III it was alleged that the applicant had accepted amounts for depositing in RD account no.682209 on various dates but delayed deposit in RD account inordinately.

3. An inquiry was conducted in which the applicant fully cooperated and as per the proceedings dated 23.05.2012 the applicant already on 'Put-off' duty, was removed from service. On 14.07.2012 the applicant filed an appeal before the second respondent (Annexure A8). The said appeal was also rejected as per Annexure A2.

4. The applicant disputes the conclusions arrived at by the Inquiry Officer in confirming his guilt. He submits that in so far as the delay in crediting the VP amounts are concerned, he had only tried to cover the fault on the part of the GDS MD who had been instructed to deliver the articles. He further states that the late remittance into the account of RD depositor was only of one day on each of the occasions pointed out in the Charges. He had

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rendered satisfactory service of over 12 years and had given no occasion for complaint and the authorities have thrown him out of the only means of livelihood which he had, for minor blemishes over a few stray incidents. He argues that the punishment meted out through Annexure A1 is unduly harsh and shockingly disproportionate to his original offence which is more in the nature of minor lapses. It is held in **Sharat Narayan Parab's case reported in (1988) 1 SCC 484** that the punishment shocking to conscience warrants intervention by the Court. He seeks quashing of the punishment order at Annexure A1 as well as the order of the Appellate Authority at Annexure A2.

5. The respondents have filed a reply statement where they have disputed the contention of the applicant that the offences involved were of minor nature. The inquiry which resulted in the action against the applicant was initiated on the basis of delay noticed in accounting the Value Payable Money Order amount collected from the addressee on delivery of VP articles. Based on the preliminary report of the Inquiry Officer, the applicant had been placed under Put-off duty. In the case of RD account No.682209, it was found that delay of several months in accounting the amounts received had occurred.

6. Thus the late credit of VP amount comes to Rs.1449/- whereas temporary misappropriation of RD accounts is Rs.33,200/-. This was indeed misconduct of a very serious nature. An inquiry was conducted into

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the case and adequate opportunity granted to the applicant to state his defence. As per the inquiry report (Annexure A6), the Assistant Superintendent Posts who is the inquiry authority had found all the charges proven. The Disciplinary Authority after carefully evaluating the case ordered the applicant to be removed from service. Thereupon, the applicant had filed an appeal petition which came to be rejected as per Annexure A2 dated 21.07.2014.

7. The evidence adduced by the applicant as well as by the others were carefully examined at each level by the Inquiry Officer, Disciplinary Authority and Appellate Authority. It is important to note that as per Annexure R5, in the statement made before the Assistant Superintendent Posts, the applicant had confessed that the “mistake” had occurred due to negligence on his part. No amount of justification can explain away the fact that the applicant had kept the money with himself instead of depositing it into Government account. This amounts to misappropriation of funds.

8. Shri Shafik representing the applicant and Shri Hari Menon, learned ACGSC on behalf of the respondents were heard. We examined all the documents on offer as well as the pleadings made before us. Shri Shafik pointedly referred to the disproportionate nature of punishment meted out to the applicant. He submitted that the delay in depositing the VP proceeds were only for three or four days and in respect of RD account referred to, the

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amounts had been credited the very next day of receipt. He stated that the applicant after he lost his job in 2009 has no source of livelihood and is in great penury. Shri Hari Menon, learned ACGSC, on the other hand, submitted that the applicant is guilty of gross misconduct and has been found wanting in integrity. He had adequate opportunity to defend himself and all opportunities before the Inquiry Officer. All procedures connected with disciplinary action have been carefully followed.

9. On the facts submitted, we see that the contention of the applicant's Counsel that the applicant had acted with minimum delay is not true to the facts. The table provided in the statement filed by the respondents which remains undisputed, need to be examined closely and hence is reproduced.

Sl. No	Type of irregularity	Details of articles/accounts	Date of entrustment	Date of credit	Amount involved	Amount of loss
1	Delayed credit	Value payable letter No.234 of Kamalpur for an amount Rs.630/- (Value + Commission sent by Pathak Jothidam addressed to Sheeba Divakaran Liyanu Clinic, Edassery	13/11/2009	19/11/2009 But amount realized on 13.11.2009	630	Nil
2		Value payable letter No.4379 of Irinjalakuda for Rs.819/- (Value + Commission) sent by intimate Marriage Bureau, Irinjalakuda addressed to Smt. Sakeena Abdulla, Arakkal House, Edassery	20/06/2009	Amount realized on 24/06/2009 but credited on 30/06/2009	819	Nil

3	RD Account No.682288 opened on 04/02/2009 for a denomination of Rs.1000/- standing open in the name of Naseemabi, Mansoor, Nalakath Veedu, Punnachode, Talikulam	03/07/2009	04/08/2009	1000	Nil
4	RD Account No.682209 opened on 08/11/2006 for a denomination of Rs.1400/- standing open in the name of Rajan M.V. Manangath House, Punnachode, Talikulam.	16/10/2007 16/11/2007 12/12/2007 05/01/2008 23/02/2008 19/03/2008 19/05/2008 19/05/2008 26/06/2008 14/07/2008 25/08/2008 22/09/2008 19/03/2009 22/04/2009 30/05/2009 17/06/2009 20/07/2009 18/08/2009 15/09/2009 19/10/2009 18/11/2009	31/03/2008 30/06/2008 31/10/2008 30/05/2009 31/07/2009 31/08/2009 31/10/2009 31/10/2009	8400 1400 7000 1400 1400 2800 1400 5600	Nil
5	RD Account No.682295 opened on 14/05/2009 for a denomination of Rs.700/- standing open in the name of A.K.Abuthahir, Ambalathveetttil, Pulampuzhakadavil, Talikulam	06/07/2009 14/11/2009	30/07/2009 30/11/2009	700 700	Nil
6	RA Account No.682296 opened on 14/05/2009 for a denomination of Rs.700/- standing open in the name of A.K.Abuthahir, Amabalath Veetil, Pulampuzhakadavil, Talikulam	06/07/2009 14/11/2009	30/07/2009 30/11/2009	700 700	Nil

Clearly, there has been a misconduct of very serious nature from the side of the applicant.

10. A court examining a disciplinary proceedings is expected to be careful in discharging its duties. In the case of **Shri Parma Nanda v. State of Haryana and others [1989 (2) Supreme Court Caes 177]**, the Hon'ble Supreme Court had the following observations to make:

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the Competent Authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the Competent Authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the Competent Authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

11. In the judgment in **State Bank of India v. Samarendra Kishore Endow [1994 (1) SLR 516]**, the Hon'ble Supreme Court reiterated the above ruling that a High Court or Tribunal has no jurisdiction to substitute its own discretion for that of an authority, stating as follows:

"On the question of punishment, learned Counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of

the High Court under Article 226. The power under Article 226 is one of judicial review. It "is not an appeal from a decision, but a review of the manner in which the decision was made". In other words, the power of judicial review is meant "to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court.

The only scope for a court to interfere has been defined in **Union Bank of India Vs. Tulsiram Patel – [AIR 1985 SC 1416]**, where the Hon'ble Apex Court ruled that the court can interfere where penalty imposed is "arbitrary or grossly excessive or out of all proportions to the offence committed".

12. The facts of the case reveal that the applicant has been found wanting in discharge of responsibilities bestowed upon him. A Branch Post Office is mostly in a remote area and is utilised particularly by persons belonging to the lower economic class. An RD account for example is mostly maintained by persons who are small traders/merchants or farmers of small plots of land. They bring the small amounts which they can save and deposit the same in the accounts in their name. They trust the Branch Post Office officials to include all particulars in their pass book as well as in the Post Office records. The entire organisation, needless to say works on trust, as often the depositors have limited understanding of the working of Government offices. By taking the money from them and not crediting it to the Government accounts, amounts to betrayal of this trust. Clearly the applicant has been found wanting in the discharge of responsibilities cast

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upon him. From this point of view the authorities have acted with the required firmness in awarding appropriate punishment, which cannot be called disproportionate or too harsh.

13. On the basis of the above we see that the OA lacking in merit and is liable to be dismissed. Accordingly, we dismiss the same. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00660/2015

1. **Annexure A1:** True copy of the Memo No.F1/2/09-10/R 10 dated 23.05.2012 issued by the 3rd respondent.
2. **Annexure A2:** True copy of the Order No.ST/2-22/2013 dated 21.07.2014 issued by the 2nd respondent.
3. **Annexure A3:** True copy of the memo No.F1/2/09-10 dated 13.05.2011 issued by the 3rd respondent.
4. **Annexure A4:** True copy of the Deposition of SW-8 in the inquiry held on 24.01.2012.
5. **Annexure A5:** True copy of the written Brief dated 22.02.2012 submitted by the applicant.
6. **Annexure A6:** True copy of the Inquiry report dated 13.03.2012 prepared by the Inquiring authority.
7. **Annexure A7:** True copy of the representation dated 03.04.2012 submitted by the Applicant.
8. **Annexure A8:** True copy of the appeal dated 14.07.2012 submitted before the 2nd Respondent.
9. **Annexure R1:** True copy of memo No.F1/02/09-10 dated 14/12.2009.
10. **Annexure R2:** True copy of Rule 12 of Service rules for GDS.
11. **Annexure R3:** True copy of RP 51 receipt in respect of VPL No.4379 of Irinjalakuda for Rs.819/- realized on 24.06.2009 but credited on 30.06.2009.
12. **Annexure R4:** True copy of applicant's statement dtd 28.07.2009.
13. **Annexure R5:** True copy of English translation of Annexure R4.
14. **Annexure R6:** True copy of daily account dated 24.06.2009.
15. **Annexure R7:** True copy of RP51 receipt in respect of VPL No.234 of Kamalpur for Rs.630/- realized on 13.11.2009, but credited on 19.11.2009.
16. **Annexure R8:** True copy of daily account dated 14.11.2009.
17. **Annexure R9:** True copy of RD pass book 682209.

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18. **Annexure R10:** True copy of statement dated 09.12.2009 of Smt.Sushitha Rajan.

19. **Annexure R11:** True copy of English translation of Annexure R10.

20. **Annexure R12:** True copy of order dated 11.09.2015 in OA No.1214/2012.
