

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00293/2015

Friday, this the 28th day of June, 2019

CORAM:

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

D. Prince, GDS MP, Edamon,
 Residing at Mankolakkal Veedu,
 Edamon PO, Pin – 691 307.

..... **Applicant**

(By Advocate : Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Inspector Posts, Punalur Sub Division,
Punalur – 691 305.
2. The Superintendent of Post Offices,
Pathanamthitta – 689 645.
3. Union of India, represented by the
Chief Postmaster General, Kerala Circle,
Thiruvananthapuram – 695 033.

..... **Respondents**

(By Advocate : Mr. T.C. Krishna, Sr. PCGC)

This application having been heard on 19.06.2019 the Tribunal on
 28.06.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “(1) Call for the records leading to the issue of Annexure A1, A4 and A7
and set aside Annexure A1, A4 and A7.
- (2) Direct the respondents to reinstate the applicant back into service
with all consequential benefits.
- (3) Any other further relief or order as this Hon'ble Tribunal may deem
fit and proper to meet the ends of justice.

(4) Award the cost of these proceedings.”

2. The brief facts of the case are that the applicant while working as a GDS MP, Edamon was suspended on 2.4.2012. Later he was issued with a charge sheet under Rule 10 of GDS (Conduct & Engagement) Rules, 2011. The enquiry was conducted and he was found to be guilty on the premises that applicant had admitted the charge whereas the fact was otherwise. However, the disciplinary authority ordered de-novo enquiry. Again the enquiry report was submitted holding that the applicant was guilty of the charge having contested as a candidate in election to the Board of Directors, Edamon Service Co-operative Bank. Based on the enquiry report the applicant was dismissed from service. In the meanwhile a similar charge sheet was issued to another colleague namely Shri K.G. Samuel, GDS MD, Aiyranallur who also contested in the same election. However, he was reinstated back in to the service. Aggrieved by the order of penalty, the applicant filed a statutory appeal before the 2nd respondent. But the appellate authority had rejected the appeal which compelled the applicant to file a revision petition (Annexure A5). Since the revision petition was not considered, the applicant was constrained to file OA No. 1016 of 2012 which was disposed of directing the respondents to consider the revision petition. However, the revision petition was also dismissed. Hence, this OA.

3. Notices were issued to the respondents. Learned counsel Mr. T.C. Krishna, Sr. PCGC entered appearance on behalf of the respondents and

filed a reply statement contending that applicant was engaged as a Gramin Dak Sevak Mail Packer with effect from 24.2.1990. He is governed by the GDS (Conduct & Engagement) Rules, 2011 as amended from time to time. Rule 22(1) of GDS (Conduct & Engagement) Rules, 2011 provides as such:

“No Sevak shall be a member of, or be otherwise associated with, any political party or any organization which takes part in politics nor shall be take part in , subscribe in aid of, or assist in any other manner, any political movement or activity.”

Further Rule 22(4) stipulates as under:

“No sevak shall canvass or otherwise interfere with or use his influence in connection with, or take part in an election to any legislative or local authority.”

A complaint was received by the respondents on 15.9.2008 alleging that the applicant and one Shri K.G. Samuel, GDS MD, Ayiranallur were candidates in the election to be held on 28.9.2008 to the Director Board of Edamon Service Co-operative Bank and that the candidates had been sponsored by Sahakarana Munnani, a political front comprising of CPI and United Democratic Front. During the enquiry conducted by respondent No. 1 the applicant has admitted that he was a candidate in the election held on 28.6.2008 which was ordered by the Hon'ble High Court for a re-polling scheduled on 28.9.2008. Applicant was proceeded against under Rule 10 of the GDS (Conduct & Engagement) Rules, 2011 and a charge sheet was issued to him on 15.5.2012. The memo of charge was sent to the applicant by registered post which was received back with the remark 'refused'. The enquiry officer was appointed to inquire in to the charges and Smt. Deepa Murali, Inspector of Posts was appointed as the presenting officer. On notice the applicant appeared before the enquiring authority and pleaded

guilty of the charge with the explanation of the circumstances. The enquiring authority submitted the enquiry report holding that the charges were proved on the basis of the admission of the applicant. However, the case was remanded back to the enquiring authority by the disciplinary authority on 18.9.2012 for continuing with the enquiry as the written submission dated 26.7.2012 given by the applicant before the enquiring authority admitting the charge was not unconditional. The enquiry was commenced afresh on 26.3.2013 and subsequent sitting was fixed on 7.5.2013. Intimations were sent to the applicant in respect of the above dates but they were received back with the remark 'intimation served, unclaimed'. All the sittings were held ex-parte and the inquiry was concluded on 27.8.2013. The presenting officer submitted her brief on 5.9.2013 and a copy of the same was received by the applicant on 11.9.2013. The applicant submitted his defence on 18.9.2013 and after taking into consideration the brief of the applicant the inquiring authority submitted her report on 10.10.2013 holding the charges as proved. Copy of the enquiry report was forwarded to the applicant and applicant submitted his written defence on 4.11.2013. After taking into consideration the evidences adduced during the inquiry, the inquiry report and the applicant's defence, the disciplinary authority issued Annexure A1 order dismissing the applicant from engagement with immediate effect. Aggrieved applicant submitted an appeal to the 2nd respondent. While the appeal was pending the applicant approached this Tribunal by filing OA No. 165 of 2014 which was disposed of by this Tribunal vide order dated 12.3.2014 directing the 2nd respondent to dispose of the appeal strictly on merit and in accordance with law, with

an opportunity of personal hearing to the applicant, if he so desired. Accordingly, the applicant was summoned for a personal hearing wherein he submitted a hearing note and deposed that he had nothing more to add than those mentioned in the hearing note. After considering the oral and documentary evidences adduced during the inquiry and the hearing note submitted by the applicant, the appellate authority rejected the appeal of the applicant. Applicant also filed a revision petition and the revisional authority upheld the decision of the appellate authority. The applicant was proceeded against under Rule 10 of the GDS (C&E) Rules, 2011 for having associated himself with a political party and for taking part and contesting as a candidate of a politically supported organization Sahakarana Munnani in the elections held on 28.9.2008 to the Board of Directors of Edamon Service Co-operative Bank, thereby contravening Rule 22(1) and 22(4) of the GDS (C&E) Rules, 2011 and thereby failing to maintain devotion to duty contravening Rule 21 of the GDS (C&E) Rules, 2011. The enquiry was held in a just and fair manner and the applicant was provided with all opportunities to defend his case. On conclusion of the enquiry, the applicant was dismissed from service by the disciplinary authority. The appeal and revision petitions filed by the applicant were also rejected by the appropriate authorities by way of speaking orders.

4. The respondents have relied upon the judgment of the apex court in *Union of India v. G. Annadurai* – 2009 (13) SCC 469 and in *State of Bikaner and Jaipur v. Nemi Chand Nalwaya* – 2011 (4) SCC 584 wherein it was held that courts cannot sit on the enquiry proceedings and punishment

if there is no violation of rules. Respondents pray for dismissing the present OA.

5. Heard Shri Vishnu S. Chempazhanthiyil, learned counsel appearing for the applicant and Shri T.C. Krishna, Sr.PCGC appearing for the respondents. Perused the record.

6. The basic question raised by the applicant in the present case is that since Shri K.G. Samuel who had also fought election for the same bank was given exoneration and reinstated back in to service the applicant ought to have been also treated similarly whereas he had been dismissed from service, which is a discrimination and the punishment is also harsh. In support he has cited judgments of the apex court in the matter of ***Rajendra Yadav v. State of Madhya Pradesh & Ors.*** – 2013 (3) SCC 73 wherein the Hon'ble apex court held that doctrine of equality applies among persons who are found guilty – Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident – Action of the disciplinary authority in imposing a harsher punishment to one person and a lesser punishment to a co-delinquent cannot be justified. Also in ***Director General of Police & Ors. v. G. Dasayan*** – 1998 (2) SCC 407 the apex court held that punishment of dismissal from service imposed on the respondent – to meet the end of justice, Supreme Court substituted an order of compulsory retirement in place of the order of respondent's dismissal from service.

7. On a plain reading of the above two judgments cited by the learned counsel for the applicant it transpired that on same set of charge a similar punishment should have been given to all the delinquent officers. During the course of arguments, respondents have drawn my attention to page 10 of the reply statement wherein it is submitted that Shri K.G. Samuel not only attended the inquiry but also admitted the charge unconditionally and had produced evidence to show that he had resigned from the electoral post on getting the charge memo, whereas the applicant had admitted the charge and absented himself from participating in the inquiry and is still continuing in the elected post even after issuance of the charge memo. Thus, these two cases cannot be equated. There is some force in the stand taken by the respondents and exoneration and punishment is the sole discretion of the disciplinary authority which cannot be interfered with by this Tribunal in the normal circumstances unless and until it shocks the conscience of the courts and Tribunals as held by the apex court in ***B.C. Chaturvedi v. Union of India & Ors.*** – 1996 SCC (L&S) 80. Though similar circumstances were drawn in the case of the applicant and Shri K.G. Samuel, the conduct of the applicant is highly deprecated and not appreciated by this Tribunal. He had fought the election which is contrary to Rule 22 (1) and (4) of GDS (C&E) Rules, 2011 whereas the co-delinquent Shri K.G. Samuel had not only resigned the electoral post but also attended the inquiry. The disciplinary authority had exercised its statutory discretion and reinstated Shri K.G. Samuel back to service whereas dismissed the applicant from service. We find nothing wrong to be interfered with the action of the respondents. Had there been a similar request from the side of the applicant by resigning from

the electoral post and the department had not considered it, then only he could have taken a ground of discrimination. This is not the case here.

8. Taking stock of the entire facts and circumstances of the matter, we do not find any merit in this Original Application. Accordingly, the OA is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00293/2015

APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the memo No. GDSMP/Edamon dated 25.11.2013 issued by the 1st respondent.
- Annexure A2** - True copy of the appeal dated 12.12.2013 to the 2nd respondent.
- Annexure A3** - True copy of the charge sheet No. GDSMD/Ayiranallur dated 15.5.2012 issued to K.G. Samuel, GDS MD Aiyanallur.
- Annexure A4** - True copy of the order No. Appeal/02/2013 dated 11.6.2014 issued by the 2nd respondent.
- Annexure A5** - True copy of the revision petition dated 1.7.2014 to the 3rd respondent.
- Annexure A6** - True copy of the order dated 3.12.2014 in OA No. 180/1016/2014 of the Hon'ble Tribunal.
- Annexure A7** - True copy of the order No. VIG/RP/2/DP/47/2014 dated 4.2.2015 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure 1** - True copy of the extract of Rule 22 of GDS (Conduct and Engagement) Rules, 2001.
- Annexure R2** - True copy of the complaint dated 15.9.2008 filed by Sri A. Salim.
- Annexure R3** - True copy of the postal envelop sent to the applicant.
- Annexure R4** - True copy of the notice dated 21.6.2008 issued in connection with the election to Edamon Service Co-op Bank Ltd.
- Annexure R5** - True copy of the poster issued in connection with the election to Edamon Service Co-op Bank Ltd.