

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00074/2019

DATED THIS THE 28th DAY OF NOVEMBER, 2019

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

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Radhakrishna
S/o Venkatasamappa
Aged 52 years
Ex-GDS BPM, Kembodi BO
a/w Tamaka SO-563 103
Kolar Division.
Residing at Bigli Benajenahalli
Bigli Hosalli Post-563 101.

....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Department of Posts
Dak Bhavan, New Delhi-110 001.
2. The Postmaster General
S.K. Region
Bengaluru-560 001.
3. The Director of Postal Services
O/o the Postmaster General
S.K.Region, Bengaluru-560 001.
4. The Superintendent of Post Offices
Kolar Division
Kolar-563 102.

....Respondents

(By Advocate Sri V.N.Holla, Sr.PC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was working in the Postal Department as GDS BPM at Kembodi BO a/w Tamaka SO in Kolar division from 23.5.1989 to

9.12.2013. On 9.12.2013, Sri Mohammed Shafi, Mailoverseer-II, Kolar Sub division visited Tamaka SO and on verification of records, he found that 19 eMOs of Rs.400/- each were shown as delivered subsequent to the death of payees. Further, SB accounts of 3 customers, amounting to Rs.5600/- in total, were found to be withdrawn after their death. The applicant was 'put off' duty w.e.f. 9.12.2013 in contemplation of disciplinary proceedings. Sri K.S.Pai, the Asst.Suptd. of Post Offices, Kolar Sub Division took statements from the applicant and also from others to the effect that the eMOs were shown as paid after the death of the payees and SB accounts of 3 customers were withdrawn after their death. In fact, these statements were not voluntary but were dictated by the Asst.Suptd. of Post Offices. He has also forced the applicant to remit Rs.4,23,400/- threatening the applicant that he would report to the police alleging that the applicant had misappropriated the amounts of Rs.40000/- on 9.12.2013 at Kolar Extension SO, Rs.150000/- on 23.12.2013, Rs.125000 on 25.1.2014, Rs.88400 on 19.3.2014 & Rs.20000 on 24.4.2014 at Kolar HO totalling to Rs.4,23,400/-. The applicant was issued with a memorandum dtd.24.7.2015 initiating disciplinary proceedings under Rule 10 of the GDS (C&E) Rules, 2011(Annexure-A1) under the following articles of charges:

Article-I: That the said Sri.Radhakrishna while working as GDSBPM at Kembodi BO A/w Tamaka SO during the period from 23.5.1989 to 9.12.2013 had shown the eMOs as paid in the name of the following deceased payees in contravention of Rule 10, 76(4) & 115(2) of Rules for Branch Offices (Sixth edition, corrected up to 31.03.1982) and thereby failed to maintain absolute integrity and devotion to duty as required of

him under Rule 21 of Department of Posts, Gramin Dak Sevaks (Conduct & Engagement) Rules, 2011.

Sl. No.	Deceased Payee details	Date of Death	Money order no./Date of booking	Date of payment	Amount (Rs.)
01	Muniyellappa, S/o Gullappa, Vadagur, Kembodi, BO A/w Kolar Extension SO	11.11.2012	047745130516849971/16.05.13 047745130606864037/06.06.13 047745130709888638/09.07.13 047745130810914370/10.08.13 047745130906941553/06.09.13 047745131009967955/09.10.13	24.07.2013 09.07.2013 31.07.2013 19.08.2013 13.09.2013 19.10.2013	400.00 400.00 400.00 400.00 400.00 400.00
02	Chinnamma W/o Sonnegowda, Girnahalli (V), Huthur Hobli, Kembodi Post Kolar Extension	04.01.2013	047745130518857459/18.05.13 047745130615882983/15.06.13	09.07.2013 18.07.2013	400.00 400.00
03	Papakka, W/o Ramappa, Ramasandra, Huthur Hobli Kembodi BO a/w Kolar Extension	21.04.2013	047745130709891465/09.07.13 047745130606866222/06.06.13 047745130516852153/16.05.13 047745130906944339/06.09.13	18.07.2013 09.07.2013 04.07.2013 21.09.2013	400.00 400.00 400.00 400.00
04	Shankarappa, S/o Gangappa, Ramasandra, Kembodi	11.12.2012	047745130606865182/06.06.13 047745130709890516/09.07.13 047745130516851115/16.05.13 047745130810916236/10.08.13 047745130906943419/06.09.13 047745130306786884/06.03.13 047745131009968289/09.10.13	09.07.2013 31.07.2013 04.07.2013 19.08.2013 13.09.2013 30.03.2013 19.10.2013	400.00 400.00 400.00 400.00 400.00 400.00 400.00

Article-II: *That the said Sri.Radhakrishna while working as GDSBPM at the aforesaid office during the afore said period had made fraudulent withdrawals in the following SB accounts opened by Sandya Suraksha Yojana (SSY) pensioners by taking fictitious LTMs and witnesses without the knowledge of the account holders in violations of Rule 133 and 134 of Branch office Rules (Sixth edition corrected up to 31.03.1982) and thereby failed to maintain absolute integrity and devotion to duty as required of*

him under Rule 21 of Department of Posts, Gramin Dak Sevaks (Conduct & Engagement) Rules, 2011.

Sl.No.	SB a/c No & Name/address of the depositor Sri/Smt.	Date of death of the depositor	Date of entry in PBs	Amount of fraudulent withdrawal	TOTAL
1	SB 418940/901416 Chinnammaiah, W/o. Late Sri.Venkateshappa , Ramasandra Village, Kembodi	10.05.2012	13.11.12 12.01.13 16.02.13	800.00 400.00 800.00	2000.00
2	SB 419029 Chinnappa, S/o late Sri.Venkataswamy, Ramasandra village, Kembodi	29.05.2011	16.11.12 12.01.13 22.02.13	800.00 400.00 800.00	2000.00
3	SB 418908 Gangappa, S/o Late Venkatappa, Ramasandra, Kembodi	29.11.2010	13.11.12 20.02.13	800.00 800.00	1600.00

- The Inquiry Officer(IO) after holding the inquiry into the above articles of charge against the applicant, submitted his report on 22.3.2017 holding that both the articles of charges were proved against the applicant(Annexure-A2). The respondent No.4 by letter dtd.23.3.2017 directed the applicant to submit his representation on the findings of inquiry within 15 days(Annexure-A3). The applicant submitted his representation on 17.4.2017 stating that the inquiry report is not clear and there is no continuity in the sentences and therefore, he sought further details on the findings of inquiry(Annexure-A4). Thereafter, the 4th respondent without considering the reply of the applicant passed an order dtd.19.4.2017 removing the applicant from engagement with immediate effect(Annexure-A5). Then the applicant submitted an appeal to the 3rd respondent on 19.7.2017 against the order of penalty imposed on him(Annexure-A6). He has also sought for a personal hearing in the matter. Then he was given

a personal hearing on 5.2.2018. The applicant submits that the 3rd respondent without recording the submissions made him during personal hearing and without considering his appeal as per Rule 18 of the GDS (C&E) Rules, 2011 had rejected the same mechanically by order dtd.21.3.2018(Annexure-A7) thereby confirming the order of the 4th respondent. Thereafter, the applicant submitted a revision petition to the 2nd respondent on 25.6.2018 seeking revision of the order of the 3rd respondent(Annexure-A8). However, the 2nd respondent by order dtd.3.9.2018 rejected the revision petition upholding the orders of the disciplinary authority/appellate authority(Annexure-A9). Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- i. To quash the (a) Memo No.F3/5/2013-14 dated at Kolar the 19.04.2017, issued by the respondent No.4, Annexure-A5, (b) Memo No.SK/STA/9-3/20/2017/I dated at bengaluru-560001 the 21.03.2018, issued by the respondent No.3, Annexure-A7 and (c) Memo No.SK/STA/9-5/10/2018/II dated at Bengaluru 560001 the 03.09.2018, issued by the respondent No.2, Annexure-A9,*
- ii. Direct the respondents to reinstate the applicant in service and treat his 'put off' duty period and the interregnum period from the date of removal to the date of reinstatement as on duty and extend him consequential benefits accordingly including continuity of service.*
- iii. Direct the respondent to refund Rs.4,23,400/- to the applicant which has been forcibly collected from him, with interest at 12% p.a. from the date of collection till the date of actual payment.*

3. The applicant submits that the Postal Department have collected Rs.4,23,400/- from him to credit it to the account of the department. The authorities termed the deposit made by the applicant as voluntary, which is false. Thereafter, he was charged for misappropriation of Rs.12800/-. He submits that a person who could part with Rs.423400/- has no reason to misappropriate Rs.12800. As such, the articles of charge are without any substance. He submits that the delivery of money orders used to be made by Sri Rama Rao, GDSMD working in the Post

office. Out of the 19 Money Orders(MOs) of Rs.400/- each, 16 MOs were delivered by the said Sri Rama Rao. The applicant has delivered 3 MOs only and he has delivered it to the correct payees, who were alive when the money orders were delivered. The authorities have left out Sri Rama Rao despite the fact that his signatures were found in the concerned MO records. However, the IO has given a perverse finding that the signature of Sri Rama Rao was made by the applicant. The said Rama Rao was not examined in the inquiry and therefore the conclusion of the IO has no basis and the inquiry is vitiated for not examining the material witness Sri Rama Rao.

4. The applicant further submits that he has shown the MOs delivered to the concerned payees after their death. There are 7 payees alleged to have died, who were the payees of the MOs. But one death certificate namely, Ex.P7 in respect of Sri.Muniyellappa in respect of 1st item of article No.1 of the charge has been produced. Even this certificate does not contain the address of Sri Muniyellappa and there is no registration number in this document. It was stated to have been obtained by the PW9, the Asst.Supdt. of Post Offices, Kolar Sub Division from the Tahsildar. The authenticity of the said certificate is seriously doubted. The death certificates of other 3 payees of the MOs and 3 depositors have not been produced. In spite of there being no evidence as to the death of these persons, the articles of charge were held as proved against the applicant. With regard to the 2nd article of charge, the same is not sustainable because the death certificates of the depositors who were alleged to have died, were not produced in the inquiry. The oral evidence cannot be let in to prove the contents of a document. As such, the date of death of persons cannot be proved by oral evidence of persons, who are in no way related to them.

5. The applicant submits that the appellate authority is the Director of Postal Services, S.K.Region, Bengaluru. In the present case, Sri G.Natarajan who was working as Director of Postal Services, Headquarters, office of the CPMG and holding additional charge of the post of Director, Postal Services, S K Region, has considered and disposed of the appeal without there being a proper delegation of powers. As such the order passed by him as appellate authority is not in accordance with law. And he failed to consider the appeal in accordance with the Rule 18 of the GDS (C&E) Rules, 2011. Hence, the appellate order is liable to be set aside. The penalty imposed on him is disproportionate to the gravity of the charge framed against him as it has not resulted in any loss to the Government nor has caused any inconvenience to the concerned authorities. The orders passed by the respondents No.4 & 2 are not speaking orders but contained irrelevant details based on their imagination and not based on the facts on record. Hence, the impugned orders are liable to be set aside.
6. The respondents, on the other hand, have submitted in their reply statement that during the visit of Mail Overseer to the post office, the applicant, while working as Gramin Dak Sevak Branch Post Master at Kembodi Branch Post office in account with Tamaka sub post office, was found involved in misappropriation of the amount of money orders payable to the social security pension beneficiaries by showing them as paid in the records of the Branch office after the death of the payees and also misappropriating the amount from Saving bank accounts of the social security pension beneficiaries after their death by forging their signatures which arrived at Rs.4,20,100/-. Therefore, the applicant was proceeded against under Rule 10 of the GDS(Conduct &Engagement) Rules 2011 by the disciplinary authority i.e. Sr.Suptd. of Post offices, Kolar Division vide memo

dtd.24.7.2015. On conclusion of the departmental inquiry, the Inquiry Officer held both the articles of charge as proved and the applicant did not submit his representation within the time prescribed in the letter dtd.23.3.2017 of the 4th respondent. After careful consideration of the findings of IO and connected records, the disciplinary authority, has imposed the penalty of 'removal from engagement'. The appeal preferred by the applicant dtd.19.7.2017 to the Director Postal Services, S.K.Region, Bengaluru(3rd respondent)(appellate authority), was disposed of confirming the penalty imposed on the applicant. Thereafter, the applicant preferred revision petition to the Postmaster General, SK Region, Bengaluru requesting to set aside the punishment order and to reinstate him into the engagement. But the Postmaster General rejected the revision petition and confirmed the penalty imposed on the applicant.

7. The respondents submit that the claim of the applicant that he was forced to credit Rs.4,23,4000 by the threat of reporting the case to police is denied as he had voluntarily credited the misappropriated amount to the Govt. Account in the period 9.12.2013 to 24.4.2014 in five instalments. Further the claim of the applicant that he had submitted a representation dtd.17.4.2017 stating that the inquiry report is not clear etc., and sought details of the findings of inquiry is denied as he did not submit any representation till the final orders were issued on 19.4.2017 and copy of the same was delivered to him on 22.4.2017. After receiving the final orders only, the applicant submitted a letter dtd.17.4.2017 which was received in the office of the disciplinary authority by the Regd. Post on 25.4.2017(Annexure-R1). In Annexure-A3 disciplinary authority has clearly mentioned that orders will be liable to be passed ex parte if no representation is received within the time prescribed in the letter. His representation on the inquiry

report dtd.23.3.2017 did not reach the disciplinary authority within the time prescribed. After lapse of over 25 days of sending the IO's report to the applicant only, the disciplinary authority finalised the case and awarded the penalty. The representation dtd.17.4.2017 of the applicant was received at the office after finalization of the disciplinary case against him. In the appellate authority's order at Annexure-A7, all the issues raised by the applicant were adequately discussed before disposing the appeal. Therefore, the claim of the applicant that 3rd respondent without considering the appeal as per Rule 18, rejected the same mechanically is not correct. The revision petition was also duly considered by passing a reasonable, speaking and self contained order by the revisionary authority.

8. The respondents further submit that it is true that in the memorandum, only a few cases are included but it is sufficient to judge integrity and devotion to duty of the applicant. Therefore, the argument put forth by the applicant that a person who could part with Rs.423400/- has no reason to misappropriate Rs.12800 and thus charge has no substance is illogical. It is true that there is a delivery agent working in the office. But there is no bar for the Postmaster to make payment of MOs. The applicant working as Postmaster himself now says that Sri Rama Rao has paid 16 out of 19 MOs and 3 MOs by him. But during the preliminary enquiries, the applicant himself had admitted that he had shown all these MOs as paid and utilized the value for his personal requirements. The applicant tries to defend the payment of three MOs admittedly made by him but failed to say how he could pay the MOs to deceased payees. The argument put forth by the applicant at para 5(iii) is not tenable as in one case, death certificate was produced as evidence which was issued by Tahsildar, Kolar on the request of

investigating officer and in some other cases, evidences in the form of say of inmates and say of Anganvadi worker who maintains preliminary records of births and death in the village and source of information for the records maintained at Taluk office was produced. These evidences are conclusive to the fact of death of the payees/depositors. The departmental inquiries are quasi-judicial in nature. Charges stand proved with the listed documentary, oral and circumstantial evidences. This requirement has been met in the case. The appeal was disposed of by the competent statutory authority and hence it is in order. The applicant admits that he committed misconduct by saying that the penalty imposed on him is disproportionate to the gravity of the charge. He claims that there is no loss to the Government. When there is a death of beneficiary, the applicant is duty bound to pass appropriate remarks and return the money order as the amount to be remitted back to the Treasury Dept of State Government. This statement of the applicant clearly reveals the lack of integrity. In similar cases connected to embezzlement of Govt. Money, this Tribunal has passed orders in OA.No.880/2013 dtd.26.8.2014, OA.No.907/2013 dtd.3.11.2015(Annexure-R2) and in OA.No.416/2016 dtd.13.3.2017(Annexure-R3) which aptly apply to the present case where the applicant has come up with adverse notice by showing payments in the names of deceased depositors/payees. Therefore, the action of the respondents in removing the applicant from engagement is in order. Thus, the OA filed by the applicant is neither sustainable on facts nor in law and is liable to be dismissed in limine as it is bereft of any merit.

9. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. Both the parties have filed their written arguments note. The applicant in this case has clearly admitted, when an

infraction was noticed, that he had accounted for payment of eMOs and withdrawal of SB accounts much after the death of the concerned individuals and used the money for his personal purposes. He would claim that in all the cases, the death certificates have not been produced and even in one instance where it was produced as being issued by the concerned Tahsildar who is the competent authority to issue such certificate, he would claim that this Tahsildar was not called upon in the inquiry and therefore, the certificate cannot be accepted. He has not stated anywhere that the certificate issued by the Tahsildar is a fake or fraudulent one. His only grouse was that the Tahsildar should also have been inquired. In another instance, the person in charge of an Anganwadi centre and close relatives have given statement confirming that the persons to whom the alleged eMO payments etc. were paid were already dead. The applicant would claim that a person by name one Sri A.Ramarao had actually paid the amounts in 16 cases and since he was not called during the enquiry and no statement recorded from him, the finding of the inquiry officer that he himself has signed as Ramarao cannot be accepted. He also states that in other three cases, he himself has paid the amount to the payees while they were still alive. Apparently, since none of the persons to whom such payments were made were actually alive at the time of enquiry, neither the applicant nor the department could have established whether these payments were actually made to the payees concerned. The applicant would state that it is not for him to disprove his guilt but it is for the inquiry officer and the respondents to prove his guilt. Even if it is one case of regarding payment after the death of payee, supported by a certificate from a competent authority, it will be sufficient proof relating to the misconduct on the part of the applicant. Other non-payments have also been certified by other

witnesses as noted by the respondents. The applicant himself admits that he sought the help from an outside person based on which he has raised all these issues subsequent to the inquiry. He was given an opportunity to defend himself to the inquiry officer's report and he states that he had asked for certain other documents vide his letter dtd.17.4.2017 but the disciplinary authority had imposed the punishment without bothering to give him an opportunity based on the additional documents he requested for. The respondents have brought in a document vide Annexure-R1 showing that the purported letter dtd.17.4.2017 had in fact been sent by registered post only on 24.4.2017 i.e. after the period given to the applicant to give his representation on the inquiry officer's report. Nothing prevented the applicant from seeking extra time in this regard. With regard to the claim of the applicant that on pain of police action, he was forced to remit Rs.4,23,400/-, the respondents have stated that there was no threat or force on him and the applicant had himself credited the amount in 5 instalments at his own convenience. The arguments of the applicant that a person who could part with Rs.4,23,400/- in this manner would not have any reason to misappropriate the alleged Rs.12,800 as has been made out in the charge memo, clearly show that having committed misconduct as proved by the respondents, the applicant would even try to rely on such statements with a view to establish that he was not at fault. If, as he alleges, he was forced to remit the huge sum of Rs.4,23,400 merely based on certain alleged threats, it defies logic since the respondents have arrived at this figure based on the detailed examination of the Branch Office records, accounts and statements and if at all the applicant was innocent as he claims, he should have very well refused to remit any such amount voluntarily. All these issues are being raised by him after the admission in the initial stages

relating to the alleged payments after the death of the payees and withdrawal of amounts after the death of the account holders which was brought into light by an inspection and verification conducted by the respondents. He has been allowed every opportunity for defending himself but he did not submit any explanation to the inquiry officer's report. His alleged request for further documents has also proved to be dispatched only after the period for representation was over and the disciplinary authority had already issued the final order. In any number of cases, this Tribunal has held that in an organisation like the respondent organisation, if such kinds of infraction are not punished, it will send very wrong signals to the other employees. As noted by the reviewing authority in Annexure-A9, the applicant has clearly misappropriated public money and he is only contesting the final decision on some technical points. The respondents have categorically stated that the applicant has breached the pedestal of trust on which the organisation of the Post Office stands. They have also concluded that it would send wrong signal to other employees if any leniency is shown even in cases where substantial documentary and other proofs exists for proving the malfeasance. Adequate opportunity has been given to the applicant to defend himself and we therefore find no merit in interfering with the decision of the respondents.

10. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/00074/2019

Annexure-A1: Copy of the memo dtd.24.7.2015
Annexure-A2: Copy of the Inquiry Report dtd.22.3.2017
Annexure-A3: Copy of the order dtd.23.3.2017
Annexure-A4: Copy of applicant's representation dtd.17.4.2017
Annexure-A5: Copy of the order dtd.19.4.2017
Annexure-A6: Copy of applicant's appeal dtd.19.7.2017
Annexure-A7: Copy of the order dtd.21.3.2018
Annexure-A8: Copy of applicant's petition dtd.25.6.2018
Annexure-A9: Copy of the order dtd.3.9.2018

Annexures with reply statement:

Annexure-R1: Copy of the wrapper of the regd. Post
Annexure-R2: Copy of order in OA.907/13 passed by the CAT, Bangalore Bench
Annexure-R3: Copy of order in OA.416/16 passed by the CAT, Bangalore Bench

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with written arguments note filed by the respondents:

-NIL-
