

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00307/2019

DATED THIS THE 28TH DAY OF NOVEMBER, 2019

HON'BLE DR.K.B.SURESH ...MEMBER(J)
HON'BLE SHRI C.V. SANKAR ...MEMBER(A)

S.S. Kasturirangan,
S/o Late T. Srinivasaiah,
Aged about 54 years,
Ex GDS BPM/DP/MC,
Somnathpura B.O.,
a/w Akki Hebbal S.O., Mandya Division,
Residing at Somnathpura Village & Post,
K.R. Pet Taluk, Akki Hebbal Hobli,
Mandya District-571 605.Applicant.

(By Advocate Shri A.R. Holla)

V/s.

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

2.The Director of Postal Services (HQ),
Karnataka Circle,
Bengaluru-560 001.

3. The Superintendent of Post Offices,
Mandya Division,
Mandya-571 401. ...Respondents

(By Shri S. Sugumaran, Standing Counsel for Respondents)

ORDER (ORAL)
HON'BLE DR.K.B.SURESH ... MEMBER(J)

Heard. The matter relates to three charges in which a defalcation of Rs.550/- was apparently detected. The applicant explains that in fact he had taken

this money and given records for it to the depositor and forgot to record it in the official ledger provided for it. Therefore, we asked him how many entries he had made on that particular day, which he had correctly recorded. But learned counsel for the applicant is unable to explain this matter as this matter is in the knowledge of his client alone. If he had such a case, then we could have examined the reason for such forgetfulness as forgetfulness continued for more than a month. Shri Holla, learned counsel submits that he is not sure of the dates as well.

However, Hon'ble Apex Court had held that it is not the volume of defalcation in the issue, but mens rea in it. We are unable to say whether there is mens rea in it or not. But then, in any statutory offence, mens rea is an absolute requirement.

2. There are other two matters also. Non-delivery of certain postal articles, which the applicant explains that he could not find the correct person at that time, but then within 15 days that concerned person had come and collected it from him. But then, apparently, by the time of inspection that has not been done.

3. Shri S. Sugurmaran, learned counsel for the respondents submits that there are additional issues also, as following this, there was investigation conducted and it was found that 67 other Registered articles were also retained by the applicant and 89 Aadhar cards were not delivered to the correct persons. On the ground that he had not been given a chance to explain this, Shri A.R. Holla challenged this. We think that he has taken a right challenge, as the applicant had not been given opportunity to challenge it. It cannot be raised anew.

4. But then relating to the incident which happened on the retention of Rs.550/-, the applicant is the best person to explain. Even on specific questioning,

he is unable to answer. Therefore, an adverse presumption will have to be taken against it. Therefore, we hold that there is no merit in the OA, as we have examined the records and find that all opportunities of defence had been given to him and rules of natural justice had been observed by the respondents while passing the order.

6. At this point of time, learned counsel for the applicant submits that the applicant has over 30 years of service and this is the only blemish pointed out against him.

7. Shri S. Sugumaran, learned counsel for the respondents replies that this may be the only time he was caught. But then it may not be the only infraction that have been taken place, as later inquiries have proven that there are many other things.

8. However, since this is beyond the pale of consideration in this matter, we are not entering into the facts, otherwise, we hold that the OA lacks merit. Dismissed. No costs.

(C.V. SANKAR)
MEMBER(A)

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

Vmr

Annexures referred to by the Applicant in OA No.170/00307/2019

1. Annexure A1 : Copy of order dated 11.11.2017.
2. Annexure A2 : Copy of order dated 17.11.2017.
3. Annexure A3 : Copy of memo dated 29.05.2018.
4. Annexure A4 : Copy of Inquiry Report dated 21.05.2018.
5. Annexure A5 : Copy of order dated 10.09.2018.
6. Annexure A6 : Copy of applicant's appeal dated 29.10.2018.
7. Annexure A7 : Copy of order dated 05.2.2019.

Annexures referred to by the Respondents in the Reply

1. Annexure R-1 : Written statement dated 04.06.2018.
2. Annexure R-2 : Letter of admittance of Articles of Charges I to III dt. 29.06.2018.
3. Annexure R-3 : Representation dated 07.08.2018.
4. Annexure R-4 : Statement dated 03.11.2017.
5. Annexure R-5 : SSA account No.8218750445 (Old No.50200157) opened by Shri Shanmukha on 23.03.2015.
6. Annexure R-6 : Statement dated 21.02.2018.
7. Annexure R-7 : Statement dated 15.02.2017.
8. Annexure R-8 : Copy of order passed in OA. 170/00907/2013.
