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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/01131/2014**

**Monday, this the 25<sup>th</sup> day of November, 2019**

**C O R A M :**

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

M.K.Lohithakshan,  
S/o.Kunjikandan,  
Aged 59 years,  
Working as GDSMD (removed from service),  
Padinjare Vemballur Branch Post Office,  
Edavilangu SO, Kodungallur,  
Irinjalakuda Postal Division.  
Residing at Miryil House,  
Padinjare Vemballur PO,  
Kodungallur, Thrichur.

...Applicant

**(By Advocate Mr.Hariraj.M.R.)**

**v e r s u s**

1. Union of India  
represented by the Secretary to Government of India,  
Ministry of Telecommunications, Department of Posts,  
New Delhi – 110 001.
2. The Chief Postmaster General,  
Kerala Circle, Trivandrum – 695 033.
3. The Superintendent of Posts,  
Irinjalakkuda Division, Irinjalakkuda.

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4. The Assistant Superintendent of Posts,  
Postal Stores Department,  
Adhoc Recruiting Authority,  
Thrissur – 680 004.
5. The Post Master General,  
Central Region, Kochi – 682 020. ...Respondents

**(By Advocate Mr.P.G.Jayan, ACGSC)**

This application having been heard on 15<sup>th</sup> November 2019, the Tribunal on 25<sup>th</sup> November 2019 delivered the following :

### **ORDER**

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

This case was remitted back to the Tribunal for fresh consideration and decision on merits. Earlier this Tribunal vide order dated 9.8.2018 passed the following orders :

16. ....In the facts and circumstances of the case and also principle enunciated in the cited judgements, this Tribunal is of the view that the impugned order of Removal from service to the applicant is liable to be set aside and is hereby set aside. Ordered accordingly. The applicant shall be reinstated in service forth with. He is entitled to all back-wages with all consequential benefits like arrears etc. The order shall be implemented within thirty days from the date of receipt of a copy of this order.

17. O.A. is allowed. No order as to costs.

2. The respondents went on appeal before the Hon'ble High Court of Kerala by filing O.P.(CAT) No.30/2019. The Hon'ble High Court vide judgment dated 10.4.2019 passed the following orders :

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4. In order to prove the charges, the enquiry officer had taken into account Exts.P1 to P18, the documents and statements of witnesses. Eight witnesses were examined by the management to prove the charges and the respondent examined one witness on his side. Opportunity was given to the respondent to cross-examine the management witnesses. In order to prove the first charge, the person who had lodged the complaint regarding delay in serving the postal article was examined. Persons who were present within and outside the post office on 2.2.2009 were examined as witnesses, to prove the second and third charges. On a perusal of the documents and the depositions of the witnesses, as also the statement of the respondent, we are of the considered opinion that the Tribunal committed a mistake in coming to the conclusion that there was no evidence before the enquiry officer for proving the charges levelled against the respondent. So also the findings of the Tribunal that the respondent was given additional workload of GDS, MD-I in order to clear the backlog and that the delay in delivering the postal article is not because of the respondent, does not seem to be in consonance with the evidence available on record. The finding of the Tribunal that it is quite obvious that somebody given extra load of work which he was performing willingly, on being accused of non-performance, would put forth forcefully his version in support of his defence and hence, there was no proof of misbehaviour, also warrant a reconsideration based on the available evidence. Of course, it is for the Tribunal to consider the acceptability or otherwise of the evidence, based on which the enquiry report was submitted. Any challenge against the enquiry report on the ground of non-compliance of the principles of natural justice and fair play, would also be open for consideration. The question as to whether the punishment was properly imposed and if so, whether the punishment is disproportionate to the alleged act of indiscipline, would arise thereafter. In view of our finding that some evidence had been tendered before the enquiry officer for proving the charges, we set aside the finding of the Tribunal that there was no evidence to substantiate the charges against the respondent. In such circumstances, it is only appropriate that the matter is sent back to the Tribunal for a decision on merits. We make it clear that the observations in this judgment would not in any manner hamper the Tribunal from arriving at an independent finding.

In the result, **the impugned order in O.A.No.1131 of 2014 of the Central Administrative Tribunal, Ernakulam Bench is set aside and the original application is remitted to the Tribunal for fresh consideration and decision on merits**, preferably within a period of two months from the date of receipt of a copy of the judgment.

(emphasis supplied)

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3. Accordingly as per the directions of the Hon'ble High Court of Kerala we proceed to consider this case afresh on merits. The applicant has filed this O.A aggrieved by **Annexure A-1** penalty order dated 7.8.2013 issued by the Assistant Superintendent of Posts, Postal Stores Department, Thrissur by which he is removed from service with immediate effect and **Annexure A-2** appellate order dated 28.11.2013 issued by the Superintendent of Posts, Irigalakkuda Division, Irinjalakuda by which his appeal has been rejected confirming the punishment.

4. The brief facts are : the applicant started his service as Gramin Dak Sevaks Mail Career (GDSMD) under Irinjalakkuda Postal Division with effect from 23.2.1981. While working so he was placed under put off duty on 6.2.2009. Disciplinary proceeding was initiated against him as per GDS (Conduct and Engagement) Rules, 2011. The Articles of charges levelled against him are as follows :

Article I – Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer, Padinjare Vemballur on 14-11-2008, failed to effect delivery of an ordinary letter addressed to Dhanya P.P, daughter of P.S.Premadasan, Panangattu House, P.Vemballur PO, effected delivery only on 26-11-2008, furnished wrong remarks during the intervening period and thereby violated the provisions of Rule 115(1) of Postal Manual Volume VI Part III, 6th Edition and thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

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Article II – Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer, Padinjare Vemballur on 02-02-2009 failed to obey orders of Inspector Posts, Kodungallur Sub Division vide Memo No.BO/P. Vemballur dated 31-01-2009, relieving him from mail conveyance duties and rearranging duties of the GDSMD of the office with effect from 02-02-2009, and thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.

Article III – Sri.M.K.Lohithakshan, while working as Gramin Dak Sevak Mail Deliverer, Padinjare Vemballur on 02-02-2009, misbehaved with his superiors, Sri.K.K.Bahuleyan and Sri.C.Balakrishnan, Mail Overseers of Kodungallur Sub Division on a visit to Padinjare Vemballur, made derogatory remarks on officers of the department and left the office without permission, thus failed to maintain absolute integrity and devotion to duty contravening the provisions of Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001.”

5. It is submitted that in the meantime the applicant has approached this Tribunal by filing O.A.No.27/2012 praying to quash the charge memo and to reinstate him back in service. The aforesaid O.A was disposed of vide order dated 8.4.2013 directing the respondents to finalise the inquiry proceedings within three months. Thereafter the Disciplinary Authority after considering the written brief of the Presenting Officer and representation of the applicant issued Annexure A-1. The applicant under Rule 13(2) of GDS (Conduct and Engagement) Rules, 2011 filed appeal for setting aside Annexure A-1 which was rejected by Annexure A-2 stating that there was no reason to intercede in the case of the applicant and accordingly reject the appeal. Aggrieved the applicant has approached this Tribunal seeking the following reliefs :

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1. To call for records leading to Annexure A-1 and Annexure A-1 and quash the same.
2. To direct the respondents to reinstate the applicant in service with effect from the date on which he was removed from service with all consequential benefits including back wages.
3. To grant such other reliefs as may be prayed for and the Court may deem fit to grant and
4. To grant the costs of this Original Application.

6. As grounds the applicant questioned the conclusion of the inquiry report based on which the penalty was imposed. He alleged that there is no evidence/absence of evidence to prove the charges levelled against him or to prove any unruly behaviour on his part. He further submitted that the penalty imposed was harsh and severe and is not commensurate with the charges levelled against him and the penalty of removal from service is not proportionate to the proven misconduct.

7. The respondents have filed their reply statement wherein they have submitted that there was ample oral and documentary evidence against the applicant. The respondents while admitting that the penalty imposed is harsh they submit that the same is required as the offences are grave deserving deterrent punishment. No department can survive with such disobedient officials and therefore the punishment is just and warranted. The Inquiry

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Authority has arrived at the conclusion on well founded facts. They further submitted that the Appellate Authority has also taken into consideration all the facts and after giving ample opportunity to the applicant, rejected the appeal after fully applying its mind.

8. A rejoinder has been filed by the applicant wherein it has been stated that as per the instructions of Director General, Posts contained in letter No.394/90(t)1TRG dated 26.7.1990, there are two categories of cases for placing GDS under put off duty and consequent disciplinary proceedings ie. one involving frauds and second one relates to unauthorized absence, leave without sanction and complaint of public etc. The charge against him comes under the second category and the instructions envisage that it has to be finalized within a period not exceeding 45 days. The applicant pointed out that the respondents have failed to adhere to the instructions of DG Posts. Further it is submitted that as per Para 3 of GDS (Conduct and Engagement) Rules, it is mandatory to review the 'put off duty' after 90 days and revise the compensation after 90 days. The applicant pointed out that no review was made on 'put off duty' at any time and compensation revised.

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9. An additional reply statement has been filed by the respondents wherein it has been stated that the delay in finalizing the disciplinary proceeding was due to administrative exigencies and the delay has in no way affected the applicant.

10. We have heard Shri.M.R.Hariraj, learned counsel for the applicant and Shri.P.G.Jayan, learned ACGSC for the respondents. We have perused the documents available on record. There were three Articles of Charges levelled against the applicant. First, that the applicant failed to effect the delivery of an ordinary letter, the second that he failed to obey orders of Inspector of Posts, Kodungallur Sub Division while working as GDSMD on 2.2.2009 and third, he misbehaved with his superiors, made derogatory remarks about officers of the department and left the office without permission while working as GDSMD on 2.2.2009.

11. We have considered the O.A afresh in due compliance with the directions of the Hon'ble High Court. The orders of the Disciplinary Authority and the evidence, that had gone into firming up its conclusions, have been evaluated as also the orders of the Appellate Authority, rejecting the appeal. Article I of the charges pertain to failure on the part of the applicant in



delivering an ordinary letter to its addressee, one Ms.P.P.Dhanya. The applicant had received the postal article on 14.11.2008 but effected delivery of the same only on 26.11.2008 thereby violating the provisions of the Postal Manual which stipulated that maximum time for effecting delivery is limited to ten days. However, examining the testimony of the addressee, Ms.Dhanya.P.P. during cross examination reveals that she had failed to affix her address in full while submitting the same along with her job application. To the specific point that Ext.P-6 address was the same as an earlier article which had been delivered to her, the answer is found in the negative as that postal article contained her father's name as well as the house number (Shri.P.S.Premadasan, House No.17/367). Certain other articles had been delivered by other CGDS and not by the applicant. She admits during cross examination that there may be other persons by the same name, Dhanya.P.P and further she denied submitting any complaint to the Secretary, Grama Panchayat, the sender of the article. Section 6 of Indian Post Office Act, 1898 envisages as follows :

6. Exemption from liability for loss, misdelivery, delay or damage.- The [Government] shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his willful act or default.

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12. Further, according to Annexure R-1 and deposition made by Smt.T.C.Pushpavathy, BPM, P.Vemballur, the applicant was working in GDS MD II beat and there was huge pendency of postal articles for delivery in beat No.I. When the BPM suggested interchange of the beat, the applicant had not expressed his unwillingness and readily worked to clear the pendency.

13. In so far as Article II of the charge memo is concerned, the allegation is that the applicant had failed to obey orders of Inspector of Posts, Kodungallur Sub Division issued on 31.1.2009 relieving him from mail conveyance duties with effect from 2.2.2009, thereby failing to maintain absolute integrity and devotion to duty. However, it is seen from further examination of the records that he did hand over duties on 4.2.2009 and the failure to hand over duties on 3<sup>rd</sup> itself was the cause for initiating action. In other words, the delay involved is that of single day. Smt.T.C.Pushpavathy, BPM, P.Vemballur in her deposition before the inquiry submitted that she herself had not noticed the date and time of the order of the Inspector of Posts, Kodungallur and has not recorded the date on which the aforesaid order was shown to the applicant.

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14. With regard to Article III of the charge memo, which is of alleged insubordination, the only evidence is the statement of witnesses that the applicant was found to be speaking angrily and loudly and the conversation pertained to the heavy work load in the Branch Office which in any case the applicant had continued to shoulder.

15. We understand that the role of the Tribunal while reviewing punishment meted out to an employee is not to put ourselves in the role of Disciplinary Authority or the Appellate Authority. The duty of the Tribunal extends only in ensuring that all procedural requirements are met and principles of natural justice have been fully adhered to in terms of opportunity extended to the applicant to defend his case. While we do not find any departure from the norms in this aspect, we do view the quantum of punishment meted out to applicant as excessive and disproportionate to the misconduct stated as proven in the inquiry. On the question of quantum of punishment disproportionate in relation to the charges levelled against the delinquent officer, the following judgments have been passed by the Hon'ble Supreme Court :

1. **B.C.Chaudhari v. Union of India (1995) 6 SCC 749.**
2. **Ranjith Thakar V. Union of India (1987) 4 SCC 611.**

3. **S.R.Tewari v. Union of India & Anr. (2013) 6 SCC 602.**

16. The applicant has been under put off duty since 2009 and removed from engagement vide penalty order dated 7.8.2013 which essentially means that he has been out of work for the last ten years. He filed the O.A when he had already attained 59 years and had 33 years of belmish less service behind him. The punishment of removal from service which has been administered will deprive him and his family of the means of livelihood as the pay and allowances cease from the date of such removal. As GDS is at the lowest rung of the postal service, the effect of penalty of removal from service is of devastating nature.

17. In view of the above facts, this Tribunal finds it necessary to quash and set aside Annexure A-1 and Annexure A-2 orders and direct that the matter be remitted back to the Disciplinary Authority with a further direction to reconsider the quantum of punishment taking into account the age and service of the applicant and the long period that he has already been out of work. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

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18. The O.A disposed of accordingly. No cost.

(Dated this the 25<sup>th</sup> day of November 2019)

**ASHISH KALIA**  
**JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN**  
**ADMINISTRATIVE MEMBER**

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**List of Annexures in O.A.No.180/01131/2014**

- 1. Annexure A-1** - A true copy of the penalty order Memo No.ASP (Ptg)/ADA/1/2012 dated 07.08.2013.
- 2. Annexure A-2** - A true copy of appellate order No.BB/Appeal/03/2013-14 dated 28.11.2013 issued by the 3<sup>rd</sup> respondent.
- 3. Annexure A-3** - A true copy of the Memo No.PM/ADA/MKL dated 02.12.2010.
- 4. Annexure A-4** - A true copy of Memo No.PM/ADA/MKL dated 06.12.2010 issued by the Adhoc Appointing Authority.
- 5. Annexure A-5** - A true copy of written brief dated 06.01.2013 submitted by the applicant.
- 6. Annexure A-6** - A true copy of the final order dated 08.04.2013 in OA 27/2012 on the files of this Honourable Tribunal.
- 7. Annexure A-7** - A true copy of inquiry report dated 22.03.2013.
- 8. Annexure A-8** - A true copy of letter No. ASP(Ptg)/ADA/1/2012 dated 29.04.2013.
- 9. Annexure A-9** - A true copy of written representation dated 12.06.2013 made by the applicant before the Adhoc Disciplinary Authority.
- 10. Annexure A-10** - A true copy of the Appeal dated 02.09.2013 submitted by the applicant.
- 11. Annexure R1** - True copy of Exhibit P-13 (with English Translation).
- 12. Annexure R2** - True copy of Exhibit P-14.
- 13. Annexure R3** - True copy of deposition of PW-5 (with English Translation).
- 14. Annexure R4** - True copy of deposition of PW-6 (with English Translation).

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**15. Annexure R5** - True copy of deposition of PW-7 (with English Translation).

**16. Annexure R6** - True copy of deposition of PW-8 (with English Translation).

**17. Annexure R7** - True copy of deposition of PW-3 (with English Translation).

**18. Annexure R8** - True copy of deposition of PW-4 (with English Translation).

**19. Annexure MA1** – True copy of order dated 09.08.2018 in O.A.No.1131/2014.

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