

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 23637 of 2009 (Z)

**AGAINST THE ORDER/JUDGMENT IN OA 336/2008 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 01-04-2009**

PETITIONER(S):

**C.PRABHAKARAN,
FORMERLY GRAMIN DAK SEVAK BRANCH POSTMASTER,
MOORKANAD, RESIDING AT CHANKARATH HOUSE, MOORKANAD P.O,
IRINJALAKUDA.**

**BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI**

RESPONDENT(S):

- 1. THE POSTMASTER GENERAL, CENTRAL REGION,
KOCHI 682 018.**
- 2. THE DIRECTOR OF POSTAL SERVICES,
CENTRAL REGION, KOCHI 682 018.**
- 3. THE SUPERINTENDENT OF POST OFFICES,
IRINJALAKUDA DIVISION, IRINJALAKUDA.**
- 4. SHRI T.K.JACOB,
ASSISTANT SUPERINTENDENT OF POST OFFICES,
INQUIRING AUTHORITY, IRINJALAKUDA DIVISION,
IRINJALAKUDA.**

**R1-R4 BY ADVS. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
SRI.JAYAPRADEEP. V., ADDL.CGSC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF CHARGE MEMO NO.F1/1/04-05 DATED 28.4.2005
ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXT.P2: COPY OF THE ENQUIRY REPORT DATED 28.12.2005.
- EXT.P3: COPY OF PROCEEDINGS ISSUED BY THE 3RD RESPONDENT
TO THE PETITIONER VIDE MEMO NO.F1/1/04-05 DATED
13.06.2006.
- EXT.P4: COPY OF APPEAL PREFERRED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT ON 21.07.2006.
- EXT.P5: COPY OF ORDER ISSUED BY THE 2ND RESPONDENT TO THE
PETITIONER VIDE MEMO NO.ST/7-19/2006 DATED 28.6.2007.
- EXT.P6: COPY OF REVISION PETITION SUBMITTED BY THE PETITIONER
BEFORE THE CHIEF POST MASTER GENERAL,
THIRUVANANTHAPURAM, ON 01.10.2007.
- EXT.P7: COPY OF ORDER ISSUED BY THE 1ST RESPONDENT VIDE
MEMO NO.ST/8-5/2007 DATED 21.1.2008.
- EXT.P8: COPY OF ORIGINAL APPLICATION O.A.NO.336/2008 DATED
31.3.2008 PREFERRED BY THE PETITIONER BEFORE THE
HONOURABLE ADMINISTRATIVE TRIBUNAL, ERNAKULAM
BENCH.
- EXT.P9: COPY OF REPLY STATEMENT FILED ON BEHALF OF THE
RESPONDENTS, DATED 23.8.2008, IN O.A.NO.336/2008 BEFORE
THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH.
- EXT.P10: COPY OF REJOINDER FILED ON BEHALF OF THE PETITIONER,
DATED 8.12.2008, IN O.A.NO.336/2008 BEFORE THE
HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH.
- EXT.P11: COPY OF ORDER DATED 1.4.2009 RENDERED BY THE
HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH IN O.A.NO.336/2008.

RESPONDENT'S EXHIBITS - NIL

//TRUE COPY//

P.A TO JUDGE

**THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.**

W.P.(C).No.23637 of 2009

Dated this the 14th day of January, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1.Heard learned counsel for the petitioner and the learned counsel appearing for the establishment in this application filed invoking Article 227 of the Constitution of India, challenging the Central Administrative Tribunal's order dismissing petitioner's original application. Petitioner, who was serving as a Gramin Dak Sevak Brach Postmaster (GDSBPM), was served with a memo with three articles of charges. The first among them included allegations of diversion of amounts in R.D accounts. The second article related to alleged refusal of the petitioner to give statement on the irregularities noticed in the functioning of the post office and thereby having violated the terms of Rule 21 of the Department of Posts Gramin Dak

Sevaks (Conduct and Employment) Rules, 2001, hereinafter referred to as the 'Rules'. The third article of charge was that there was a situation relating to acceptance of premium from an insurant who had a policy and when that lady went to the post office to insist that entries be made in relation to payments made by her, the petitioner quarrelled with her, using indecent dialect in the presence of the members of public who were in the post office to pay telephone bill etc. This allegation was also stated to be one in violation of Rule 21 because, according to the establishment, the petitioner had failed to maintain devotion to duty. The enquiry report by the enquiry officer concluded holding that article No.I is not proved, however that, article No.II was proved and article No.III was proved partially, that is to say, in so far as the alleged indecent conduct of the petitioner is concerned, the enquiry proceedings which led to the report dealt with materials which included the statement and testimony of Smt.Shanitha Jaindeen, the lady against whom the alleged indecent actions came from the petitioner and certain other witnesses including department persons were also examined by

the enquiry officer. No petition alleging bias against the enquiry officer was filed at any point of time. The enquiry report was accepted by the disciplinary authority and the petitioner was handed down the punishment of removal from service, holding that he is not a fit person to be retained in Government Service. The appellate authority confirmed the findings and punishment. The Postmaster General rejected the petitioner's revision against that. The Tribunal has affirmed the enquiry proceedings and the disciplinary order, appellate order and revisional order and has concluded that there is no ground to interfere with the punishment in terms of the Administrative Tribunals Act, 1985.

2.The learned counsel appearing for the petitioner argued, among other things, that the quality of allegations, in particular, the use of indecent dialect against a lady who visited the post office cannot be sustained since no word which could be treated as indecent was used. It is pointed out that the words attributed are common-parley terms used in singular or plural in various parts of a State. The totality of the fact

situation is pointed out to argue that the fact of the matter remains that the petitioner needed time to sort out the papers in view of the heavy work that was being undertaken and hence, he had only requested the lady to wait and at the best what transferred have been a mere outburst under the pressure of work. It is further argued that in so far as article III is concerned, the allegations regarding the refusal to accept premium having been found against even in the enquiry, the penalty handed down is too harsh, merely with reference to the second limb of article No.III, that is to say, the allegations as to indecent behaviour and article II which dealt with insubordination. Buttressing this submission further, it is argued that article II would not stand at all, because even as per the enquiry report, the petitioner was 'put off' duty and, therefore, that could not have any existence of his statement to the superior while he was not on duty in the office. On the whole, it is argued that the findings of the enquiry authority and the action taken by the disciplinary authority and also the revisional authority ought to have been interfered with by the Tribunal. That not having been done, it is pleaded that this

Court may invoke Article 227 of the Constitution of India and interfere.

3.*Per contra*, the learned counsel for the establishment argued that the materials on record clearly disclose application of mind by the enquiry authority on all relevant facts and factors as well as materials in the enquiry. He argued that the enquiry report has been appropriately assimilated and the disciplinary authority has handed down the punishment after assimilating all relevant situations. The appellate authority and the revisional authority have also gone through the entire files and have for reasons stated by them concurred, it is argued.

4.At the outset, we may notice that the findings of the enquiry authority in so far as article II and the second limb of article III are concerned, where the only issue that had fallen for consideration before the Tribunal in so far as the enquiry is concerned is insubordination by refusing to give a statement in relation to the irregularities noticed in the functioning of a branch post office are attempted to be explained off by the

petitioner by saying that he was 'off duty'. In our view, that would not have sufficed the purpose. This is because, when matters relating to irregularity in management of a post office are being looked into and when the the superior wants a particular statement to be tendered by a subordinate authority, the one called upon to give statement cannot excuse himself by saying that he is 'off duty'. Be that as it may, we think that along with this we also need to take into consideration the findings regarding the allegation regarding misbehavior to the lady customer. The use or otherwise of certain words in Malayalam and the question whether those words are indecent by themselves, in our view, appear to decide the point. We say this because, the critical finding of the enquiry authority and its appreciation by the disciplinary authority, appellate authority and revisional authority in this regard are not as to the use of any particular word which is treated as indecent dialect, but the manner in which the petitioner had behaved to a customer, that too, a lady, in the presence of other persons in the post office. We are not suggesting that he could have done if she were alone. With this, we proceed to look into the sequence of

the decisions by different authorities. Adverting to the enquiry report, we may quote the following, whereby the enquiry authority held that Article III is partly proved:

“ The dispute and quarrel was about the entry of credits in the PR book. Smt.Shanitha had paid premium for all months from December 2003 to January 2005 and she had every right to get these credits noted in her PR Book and Sri.Prabhakaran was duty bound to comply with her request. The insurant had paid the premium for March 2004 and CEDS had entered this payment as the first entry on 1.4.2004, in the RPLI register, without verifying his records, the CEDS made a dispute and quarrel with the insurant regarding this credit and declined to enter the premium payments in the PR book. I find from evidence on record that the CEDS quarrelled with the insurant with indecent dialect on 28.2.05 in the presence of the members of the public and I hold this part of the article III of the charge as proved. Taking all 3 parts together I hold article III of charge as partly proved.”

5. The disciplinary authority concluded as follows:

“ Having proved the charges to the extent

stated by the investigating agency, the quantum of punishment to be awarded is to be considered. Refusal to give statement to the Sub Divisional Officer is a grave irregularity committed by the charged GDS. How can the Dept. enforce discipline on such incorrigible staff? Similarly the GDSBPM was duty bound to post the entries in the PRB instead of creating scene and entering in heated exchange on words with customers. Branch Postmaster is the real representative of the Dept. in rural areas. Sri.C.Prabhakaran had misbehaved to a customer especially a lady customer in front of other customers and thereby tarnished the image of the Dept. By the above acts Sri.C.Prabhakaran failed to maintain absolute devotion to duty violating provisions of Rule 21 of Dept. of Posts Gramin Dak Sevaks (Conduct and Employment) Rules 2001. Dept. is holding training classes and interactions to the rural postmasters for making them more customer friendly and also to generate more revenue from the valuable customers. But the charged GDS simply ignored these efforts and chose to act on his will and pleasure. In view of the above facts, I find that Sri.C.Prabhakaran is

not a fit person to be retained in Govt. Service.”

6.The appellate authority stated *inter alia* as follows:

“PW-9, PW-10 and PW-11 in exhibits P9, P17 and P18 have confirmed that there was usage of un-parliamentary words by the appellant. The points raised by the appellant that the behaviour of the customer was provocative is an indirect admission that he crossed the limits of acceptable behaviour in his interaction with her.

Regarding the quantum of punishment the first obligation of any person associated with Government is to render service to and not merely exercise authority over the public. It is the duty of the divisional head to ensure that staff of his unit having direct contact with the public are helpful in attitude and quick in dispensing of services and that stern deterrent action is taken against rude behaviour and dilatory tactics. In this case the head of a Branch Post Office has in two separate incidents been proved to have refused to obey his superior officer and to have denied a particular service to a customer and to have quarreled

with the customer, that too a lady, in front of other customers using un-parliamentary words when she had come to the post office in connection with a perceived deficiency in service. Violation Rule 21 of GES (Conduct and Employment) Rules 2001 is implied in both the incidents. ”

7.The revisional authority, namely, the Postmaster General dealt with Article No.III and held as follows:

“This leads to the third related issue of heated words being exchanged between the complainant and the petitioner. Again there is enough evidence to show that such an exchange did take place from the statement of witnesses present there at that time. Even in his revision petition the petitioner states that “when a customer without valid proof made a false allegation it offended the Charged GDS”. He also admits to an exchange of words, but does not consider the words used as misbehaviour or a quarrel with “unparliamentary words”. According to him, the complainant, a lady, spoke in a provocative way and the usage made by her was not supposed to be used against a public servant. He argues that there was no indecent behaviour, but only

exchange of words to convince Pw-8 that what she alleged against the Charged GDS was not correct. He concludes that speaking loud or arguing when a serious allegation is aired is not within the ambit of Rule 21 of the GDS (C&E) Rules.

The conduct by an employed who had put in 23 years of service as BPM is totally unacceptable. There appears to have been certain circumstances. Moorkanad BO on 28.2.2005 that provoked a customer, who came to pay her insurance premium. It is seen that the petitioner reacted to her complaints in an aggressive way resulting in a heated exchange of words in public, which included references to the gender of the complainant. A postmaster is a representative of the Central Government and one who is expected to tackle customers who need service from a post office with tact and maturity. There were other options available to the petitioner to handle the situation that occurred in the BO, instead of getting provoked and entering into a loud exchange of words, as admitted by him. Across the country, in over one and a half lakh post offices, postmasters are expected to tackle such

situations on a day to day basis without getting provoked. If this is not done, the very purpose of Government providing an outlet for postal services, where customers can access facilities conveniently, and of a quality that meets with their aspirations will be defeated. By the petitioner's own admission the incident did occur. There is only a difference of perception about whether he was right in being provoked by the customer and retaliating to her comments. In so far the Department is concerned, this totally and unequivocally tantamounts to unacceptable behaviour towards a customer. No postmaster is expected to argue loudly with a customer in public or use gender sensitive words with a lady in the post office premises. This is a serious charge which has been proved even by the petitioner's own admission and it is not possible to take a lenient view of the matter."

8. On the basis of the aforesaid analysis of the relevant facts and the conclusions that the departmental authorities had entered, we see that the learned Tribunal was justified in stating as follows:

"It is seen that the applicant reacted to the

complaints in an aggressive way resulting in heated exchange of words in public which included unwelcome reference to the gender of the complainant. The very purpose of Government providing an outlet for postal services where customers can access facilities conveniently and for a quality that meets with their aspirations will be defeated. No Postmaster is expected to argue loudly with a customer in public or use insensitive words with a lady at the post office counter. As rightly pointed out by the Appellate authority, the applicant has by his act of defiance towards his superior, his failure to provide quick and efficient services at the counter, has tarnished the image of the postal department before the discerning public. In many villages when the post office is the sole representation of Government machinery, the Postmaster is expected to be tactful and mature and unfailingly courteous. The aggressive behaviour on the part of the petitioner happened as stated by the Disciplinary authority in spite of the various training sessions imparted to rural Postmasters to be customer friendly and to generate more revenue from the valuable customers."

9.The consistency of the aforesaid findings at the hands of the

different departmental authorities and the conclusion of the judicial review by the Tribunal do not leave any room for us to step in, in exercise of authority under Article 227 of the Constitution of India in favour of the petitioner. We see no ground to grant any relief.

In the result, this writ petition is dismissed.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(K.HARILAL, JUDGE)

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P.A TO JUDGE

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