

(1966) 11 KL CK 0028
In the High Court Of Kerala

Kesava Pillai

APPELLANT

Vs

Senior Superintendent of Post Offices and Another

RESPONDENT

Date of Decision : 02-11-1966

Acts Referred:

Citation : (1967) 11 KLJ 413 : (1967) 2 LLJ 828

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Judgement

V.P. Gopalan nambiyar, J.—The petitioner who was the postman in the Tirumala post office during the period from 4 October 1963 to 3 February 1964 was charged with gross carelessness and negligence for non-observance of the provisions of Rule 709 (1) and 709 (3) of Chap. XIII of the Posts and Telegraphs Manual, Vol. VI, in effecting payment of amounts covered by the three money orders specified in the charge. The charge was enquired into and found proved by the enquiring authority. The petitioner was thereupon served with a show-cause notice against the proposed punishment of dismissal from service. After considering the petitioner's representations, by proceedings of the disciplinary authority (Ex. P. 3), the enquiry report was accepted and the proposed punishment of dismissal from service was Inflicted upon the petitioner. This writ petition as originally filed was to quash Ex. P. 3. The petitioner would appear to have preferred an appeal against Ex. P. 3 order and subsequent to the filing of the original petition, the appellate authority dismissed the appeal. The petitioner thereafter filed an "additional petition," Civil Miscellaneous Petition No, 8006 of 1966. Exhibit P. 4 was filed along with it, as a copy of the appellate order and the petitioner prayed that Exs. P. 3 and P. 4 orders may be quashed. Civil Miscellaneous Petition No. 8006" of 1966 is really a petition to amend the prayer in the original petition so as to quash the appellate order Ex. P. 4 also. Treated as such the civil miscellaneous petition was allowed.

2. In support of his prayer, to quash Exs. P. 3 and P. 4 orders, the petitioner's counsel urged that the enquiry was violative of the principles of natural justice

and that Rule 709 (1) and 709 (3) referred to In the charge are really not applicable to the case. I am not prepared to accept the petitioner's contention that the enquiry was violative of the principles of natural justice. The point appears to have been raised by the petitioner in answer to the show-cause notice issued by the disciplinary authority. It has been listed as the second point raised by the petitioner in support of his contention in Para. 7 (at p. 8) of Ex. P. 3. Discussing the point, the disciplinary authority observed that the petitioner had not requested for the evidence of the persons to whom the amounts covered by the money-orders were paid, nor Insisted on their presence at the enquiry. Having regard to these facts, I am not prepared to entertain the petitioner's objection that there was violation of the principles of natural justice at the stage of the enquiry, by reason of the persons to whom the amounts covered by the money-orders were paid not having been called as witness and by reason of certain statements made by them having been used in evidence in the absence of such examination.

3. It is also to be noted that the disciplinary authority has discussed the case and the evidence against the petitioner after an analysis of the various aspects in Para. 9 of " Ex. P. 3. It is difficult to see from the said discussion contained In Para. 9 that the finding of guilt against the petitioner was rested solely or entirely on the statements now objected to by the petitioner.

4. Rule 709 (1) and 709 (3) in Chap. XIII of the Posts and Telegraphs Manual, Vol. VI, read as follows:

709. Responsibility for correct deliver of articles and payment of money-orders.? (I) Postmen are responsible for the correct delivery of all articles and the correct payment of all money-orders entrusted to them. In all cases of doubt the postman must satisfy himself as to the addressee's or payee's identity by making proper enquiries before delivering the article or paying the money-order.

* * *

(3) Money-orders In favour of persons not permanently resident within the jurisdiction of the office of payment or personally known to the postman, should be paid only on satisfactory proof of the Identity of the claimant with the person named in the money-order. The Information obtained from the person who Identifies the claimant must be such as will enable the officials of the post office to readily find the payee again, should any mistake or fraud have occurred, and, with this object, the permanent address of the payee, as vouched for by the person who identifies him, must be noted on the money-order by the Identifier who should add his own address below his signatures under the "identifier's certificate" printed on the money-order form. If he refuses to comply with this request, the postman should exercise greater care In accepting the Identification as genuine. A postman is not authorised to pay a money-order to any one personally unknown to him unless and until he has been satisfactorily identified by some trustworthy person known to the postman, and it must be understood

that the statements of such persons are not to be accepted without full enquiry as to his actual knowledge of the claimant. He should always be asked to explain how he became acquainted with the claimant "and how long he has known him.

It should not be considered sufficient evidence of the right of a claimant of a money-order that the money has been remitted In response to a telegram sent by him."

5. The petitioner's counsel raised an Interesting argument that these rules will cover only the payment of money due under a money-order to the payee or the addressee and not to the repayment of the same to the remitter after the return of the money-order undelivered to, or refused by the addressee. This subtle contention was never urged by the petitioner at any of the prior stages, and I should decline to entertain this for the first time in these proceedings. I am also satisfied that on the language of Rule 709 (3), and especially the portion *Italicized* this contention is not open to the petitioner. The words *Italicized* in Rule 709 (3) seem to be wide enough to cover a case such as what we are concerned with In the present case, viz., of repayment to the remitter. I find nothing to warrant any limitation on these words that the payment can only be to payee to whom the money-order is addressed and not to the remitter who has to be repaid the amount covered by the money-orders, If same is returned either refused by the payee or undelivered,

6. It was finally urged by the petitioner's counsel that the petitioner's conduct was the subject-matter of investigation for the purpose of launching criminal proceedings and that therefore the departmental proceedings against the petitioner ought not to have been started. My attention was not called to any rule or other provision which forbids the Institution of disciplinary proceedings during the pendency of the investigation Into a criminal charge regarding the subject-matter of the enquiry. I am unable to accept the broad submission made by the counsel for the petitioner that because of the likelihood or possibility of a criminal prosecution, disciplinary proceedings against the petitioner cannot be instituted.

7. I dismiss this original petition, but in the circumstances, without costs.