

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

429

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DATE OF DECISION 15.11.1991

A.Udayakumar _____ Applicant (s)

Mr.Pirappancode V.Sreedharan Advocate for the Applicant (s)
Nair

Versus

UDI rep. by Secy., Deptt. of Respondent (s)
Posts, New Delhi & 4 others

Mr.P.Sankarankutty Nair,ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *✓*
2. To be referred to the Reporter or not? *✓*
3. Whether their Lordships wish to see the fair copy of the Judgement? *✓*
4. To be circulated to all Benches of the Tribunal? *✓*

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant, Ex-Extra Departmental Mail Man of Quilon RMS has filed this application under Section 19 of the Administrative Tribunals Act, praying that the order dated 11.10.1989 of the second respondent, RMS, Quilon removing him from service with effect from 11.10.1989/^{Annexure-XIV} and the Appellate Order of the 4th respondent, The Senior Superintendent of Post Offices, RMS, Trivandrum Division dated 12.2.1990 at Annexure-XVI, rejecting his appeal against the Annexure-XIV order may be set aside and the respondents may be directed to reinstate

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the applicant in service with all consequential benefits including arrears of pay and allowances. The applicant's case as set out in the application can be shortly stated thus:

2. The applicant was working as Extra Departmental Mail Man at Quilon RMS from 22.5.1980 onwards. On 1.9.1987 as he suddenly fell ill he could not report for duty and therefore he reported about his illness and inability to report for his duty to the S.R.O., Quilon by a telephone message on the same date. As he was suffering from enteric fever from 1.9.1987 to 9.11.1987, after recovering from illness he reported before the SRO, Quilon for joining duty with the necessary leave application, Medical Certificate and medical fitness certificate. But the second respondent did not allow the applicant to rejoin duty saying that the leave exceeded 90 days, the matter had to be referred to the 4th respondent. The applicant went on visiting the office of the second respondent repeatedly, enquiring about the decision of the 4th respondent. But since he did not get a favourable reply he met the 4th respondent who informed him that he had nothing to do with the matter and that the question had to be decided by the second respondent himself. The applicant therefore again approached the second respondent who still refused permission to him to join duty.

The second respondent dragged the matter until 29.2.1988 by which time his absence from duty exceeded ~~under~~ 90 days. Thereafter the applicant was served with a memorandum of charges issued by the second respondent. The article of charge reads as follows:

"Shri A Udayakumar, while functioning as EDMM SRD, Quilon, during the period from 22.5.1980 unauthorisedly absented from duty from 1.9.1987 to 29.2.1988 (182 days) contravening provisions of Rule 5 of P&T ED Agent(Conduct and Service) Rules, 1964 and thereby exhibited lack of devotion to duty violating provisions of Rule 17 of the said Rules."

The applicant submitted a written statement of defence denying the charges. The second respondent decided to hold an enquiry and appointed an Enquiry Officer. In the enquiry Shri Chellappan, the then incumbent in the office of the second respondent who was the Disciplinary Authority was the only witness examined in support of the charge: two were also marked. The applicant examined two witnesses in defence. The Enquiry Authority submitted a report holding that the charge was partially established. Without serving on the applicant a copy of the report of enquiry and without giving him an opportunity to make a representation, the second respondent issued an order dated 29.9.1988 at Annexure-V imposing on the applicant a penalty of removal from service with effect from 29.9.1988. Though the applicant filed an appeal

before the 4th respondent, this appeal was rejected by order dated 30.3.1989 at Annexure-VII on the ground that it was time barred. The applicant filed a review petition before the 5th respondent, the Post Master General, Kerala. The 5th respondent allowing the review petition remitted the disciplinary proceedings to the second respondent with a direction to furnish the applicant with a copy of the enquiry report and to pass final order in the proceedings after considering the representation, if any, submitted by the applicant within a period of 10 days from the receipt of a copy of the Inquiry Authority's report by him. Though the applicant met the second respondent immediately on receipt of the copy of the order in review, the second respondent did not give him a copy of the enquiry report. Therefore, on 4.8.1989 the applicant submitted a written representation to the second respondent requesting him to give him a copy of the enquiry report without further delay. A copy of this representation is at Annexure-X. Thereafter, the second respondent issued an order dated 8.8.1989 at Annexure-XI informing him that after a careful consideration of the enquiry report and connected documents he differed with the finding of the Inquiry Authority that the charges were only partially proved and ~~that he had~~ held that the charges were fully proved, and that he had provisionally decided

imposing on the applicant a penalty of removal from service. He was given an opportunity to submit his representation in regard to the penalty proposed. Along with this order at Annexure-XI a copy of the enquiry report Annexure-XII was also furnished to the applicant. In obedience to the direction contained in Annexure-XI contending that the charge against him was not established, and that the proposed penalty may not imposed on him. Rejecting the representation the second respondent by the impugned order dated 11.10.1989 at Annexure-XIV imposed on the applicant a punishment of removal from service. The appeal filed by the applicant challenging this order was rejected by the 4th respondent by the order at Annexure-XVI. It is aggrieved by the above orders and his removal from service that the applicant has filed this application.

3. It has been averred in the application that the action of the second respondent in not permitting the applicant to join duty while he reported after recovering from the illness and to charge-sheet him after dragging on his absence to 182 days is mala fide and intended to oust the applicant from service, that the proceedings are vitiated as the Disciplinary Authority himself has been the sole witness for prosecution, that the Inquiry Authority has^{erred} in differing

with the Enquiry Officer without giving an opportunity to the applicant to make his representation before a decision was taken, and that the Appellate Authority has not applied his mind to the grounds urged by the applicant in his appeal. The applicant therefore prays that the impugned orders may be quashed and the respondents may be directed to reinstate him in service with full backwages and other benefits.

4. In the reply statement filed on behalf of the respondents the impugned orders sought to be justified on the ground that the applicant has never reported before the second respondent from 1.9.1987 to 29.2.1988 inspite of a letter written by the second respondent on 24.9.1987 directing him to report for duty, that there is nothing irregular in the Disciplinary Authority having tendered evidence as per witness, as the decision was taken by the different officer, and that the impugned punishment order as well as the Appellate Order were issued after due application of mind to the enquiry report and also to the fact mentioned in the appeal memorandum.

5. We have heard the counsel on either side and have also carefully perused the pleadings and documents on record and also the proceedings of the enquiry produced by the learned Central Government Standing Counsel.

6. The main grounds urged by the learned counsel for applicant are:

- i) The entire disciplinary proceedings is vitiated because the Disciplinary Authority has got himself examined as principal witness in support of the charge.
- ii) Since the applicant was not permitted to join duty immediately after his recovery from his illness the failure on the part of the Disciplinary Authority not to allow him to join duty and then to charge-sheet him for unauthorised absence even for the period for which he was not so allowed to join duty is malafide and intended to oust the applicant from service.
- iii) The finding of the Disciplinary Authority that the applicant is guilty of the charge framed against him is perverse.

7. The only witness examined in support of the charge before the Inquiry Authority is Sri Chellappan the then incumbent in the office of the second respondent who initiated disciplinary proceedings by issuing the Annexure-2 memorandum of charges. The learned counsel for the applicant argued that this has vitiated the entire disciplinary proceedings because it is a case where the prosecutor himself has assumed a role of witness as well as that of a judge. Though Sri Chellappan who was the Disciplinary Authority ^{who} issued ^{the} memorandum

of charge to the applicant had tendered evidence as a witness in support of the charge, there is nothing to indicate that he had any personal involvement in the matter or that he was personally interested. Further, by the time when the enquiry was held Shri Chellappan has been transferred from the office of the SRO, Quilon and another person had taken charge in the office of the second respondent. So, it is not a case where Shri Chellappan had assumed the role of an adjudicator as he had no role in the adjudication of the question of guilt of the applicant. Therefore we are of the view that the examination of the Disciplinary Authority as the sole witness in support of the charge cannot be taken as a vitiating circumstances in this case.

8. Before considering the second argument, we will now consider the argument of the learned counsel that the finding of the Disciplinary Authority that the applicant is guilty of the charge ~~is~~ perverse. The charge against the applicant is that he remained unauthorisedly absent from duty from 1.9.1987 to 29.2.1988 (182 days) contravening the provisions of Rule 5 of P & T ED Agents (Conduct & Service) Rules, 1964 and thereby exhibited lack of devotion to duty violating provisions of Rule 17 of the said Rules. In the enquiry report at Annexure-XII the Inquiry Authority made the following observations:

"P.W. has admitted that Sri Udayakumar approached him for duty before 11.1.88 but he did not admit him for duty as

he considered that SSRM was to take a decision on the matter since absence of Sri Udayakumar exceeded 90 days. This piece of evidence alone is sufficient to prove that absence of Sri Udayakumar would not have exceeded 180 days had he been admitted for duty when he approached the SRO for duty. Hence my finding on the charge is that Sri A.Udayakumar was unauthorisedly absent from duty with effect from 1.9.1987 till December 1987 and that the charges against the official stand Partially proved."

This finding of the Inquiry Authority was based on the testimony of Shri Chellappan, the sole witness examined in support of the charge as follows:

" 1.9.87 ു 29.2.88 അധിഷ്ഠിത ലേൗൽ
പോയിട്ടു റോഡായെക്കുറുപ്പു നിക്കാൽ
റോക്കായെ പറയാൻ പററിതു. അൻ
എന്നിൻ ഇതുതെ വന്നേക്കായുന റേഡ
സറ അകിൽ ഉറയ കുമാർ ജോലിക്കു
ഒ വേരിക്കാൻ വന്നിട്ടു റോഡായെക്കു
ക്കെരിക്കരിയിതു. 11.1.88 ു കുറുപ്
ഉറയ കുമാർ ജോലിയു് ഒ വേരിക്കാനായി
വന്നിട്ടുണ്ടു്. പുതിയ ഡക്കുലറേഷനിനു് 90
ദിവസത്തിൽ കൂടുതൽ തുടർച്ചയി
unauthorised absence ആയാൽ, 88RM
തിരുമാന മെറ്റിക്കെക്കുറുപ്പു നിയന്ധന
ജുജുത റോക്കു് ഉറയ കുമാറിനെ ജോലിയിൽ
ഒ വേരിക്കുറുപ്പു 88RM ു റോ
നേഴ് വെക്കു."

This finding of the Inquiry Authority was disagreed by the Disciplinary Authority in his order dated 8.8.1989 at Annexure-XI without furnishing a copy of

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the enquiry report to the applicant and without giving him an opportunity to make a representation. The Disciplinary Authority has held that, as the absence of the applicant is more than 90 days when he reported for duty before 11.1.1988 the second respondent was correct in not admitting the applicant to duty, and that, therefore the absence of the applicant from 1.9.1987 to 29.2.1988 is unauthorised, and that, therefore the charge is established in full. It is true that the Disciplinary Authority had along with Annexure-XI order given the applicant a copy of the enquiry report. The applicant was given permission only to make a representation in regard to the proposed penalty of removal from service and not against the merit of the finding. Anyway in the final order passed by the Disciplinary Authority at Annexure-XIV the Disciplinary Authority has found that the charge has been established in full. In the statement of imputations attached to the memorandum of charge as also in the reply statement filed by the respondents to this application, the stand taken by the respondents is that, after being absent from duty from 1.9.1987 nothing was heard from the applicant till 29.2.1988. But the testimony of PW-1, Shri Chellappan, the sole witness examined in support of the charge belies this case because it is admitted by him that prior to 11.1.1988 the applicant reported ~~xxxxxxx~~ for joining duty,

and that he ~~did not permit~~ ^{xxx} him to join duty on the ground that as the absence exceeded 90 days a decision by the 4th respondent was necessary for putting him back to duty. Therefore it is a case where long before 29.2.1988 the applicant had admittedly reported for duty, but was denied permission to join duty by the Disciplinary Authority. The charge therefore that the applicant remained unauthorisedly absent from 1.9.1987 till 29.2.1988 cannot be said to have been established. As the applicant was not put off duty when he reported for duty prior to 11.1.1988 the second respondent should have permitted him to join duty. It was open for him to put him off duty if so required and to take action for the unauthorised absence, if any, upto that date. Two ^{es} ~~witness~~ ^{es} were examined on the side of the applicant at the enquiry. The first witness for defence Shri V.Sasidharan, Checker, SRO Quilon has deposed that on 1.9.1987 a telephone message was received in the office informing that the applicant was taken ill and that it was not possible for him to report for duty, and that two months after that date the applicant had reported before the SRO (the second respondent), and that the second respondent had sent him back to come with proper medical certificate. On this aspect of the evidence of ~~this witness~~ there has ~~not been~~ ^{not been} any cross-examination by the Presenting Officer. The second witness, Manikandan Pillai also an employee of the SRO, Quilon has sworn that, before Christhumas, 1987

the applicant had appeared before the second respondent with a letter, that the second respondent sent him back saying that the letter was not sufficient, that the applicant took back the leave application and came back with a medical certificate, and that the second respondent had again sent the applicant back saying that the medical certificate was not sufficient. On this aspect of the testimony of this witness also there has not been any cross-examination on behalf of the Disciplinary Authority. The PW-1, Shri Chellappan also has admitted that prior to 11.1.1988 the applicant reported in this office seeking permission to rejoin duty, and that he did not permit him to rejoin duty as the decision in that regard had to be taken by the 4th respondent. On the basis of the above evidence the finding of the Disciplinary Authority that the applicant remained unauthorisedly absent from 1.9.1987 till 29.2.1988 has to be held as absolutely perverse. Shri Chellappan the then incumbent in the office of the second respondent who issued the charge sheet has committed a grave error in not permitting the applicant to join duty when he reported for duty prior to 11.1.1988. Having denied permission to join duty, it is ^{absolutely} unjust to charge sheet the applicant for unauthorised absence from 1.9.1987 to 29.2.1988. Though the applicant should have normally applied for leave before availing leave, there may be

circumstances in which it would not have been possible on account of severe illness. In the case of the applicant, that was what had happened. The applicant fell ill on 1.9.1987. Though he could not make a formal application for leave he had on the very same date informed the office of the second respondent of his illness and consequently inability to report for duty, and has when he became fit to join duty approached the second respondent for permission to join duty. It was the second respondent who did not allow him to join duty and take action on the request of the applicant for leave on medical ground. Therefore, we are of the view that the finding of the Disciplinary Authority that the applicant is guilty of unauthorised absence from 1.9.1987 to 29.2.1988 and that therefore he has exhibited lack of devotion to duty contravening Rule 17 of the ED Agents(Conduct and Service) Rules, 1964, is perverse and unjustified. From the evidence on record at the enquiry, no reasonable man can reach a finding that the applicant was guilty of the charge as framed.

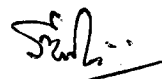
9. We have already observed in the foregoing paragraph that the action of the second respondent in not allowing the applicant to join duty when he reported before 11.1.1988 is unjustified and unwarranted from the rules and instructions and therefore, we are of the view that the argument of the learned counsel for the applicant that the action of the second respondent in charge-sheeting him for unauthorised absence

from duty from 1.9.1987 to 29.2.1988 lacks bonafides
cannot ^{be} brushed aside as meritless.

10. The Appellate Authority has not considered these aspects of the case in his order at Annexure-XVI though in the memorandum of appeal the applicant had specifically raised these points. The Appellate Order at Annexure-XVI is also therefore not sustainable in law.

11. In the conspectus of facts and circumstances we allow the application and set aside the impugned orders at Annexure-XIV and XVI, and direct the respondents to reinstate the applicant in service forthwith with effect from 29.2.1988 and to regularise the period of absence from 1.9.1987 to 29.2.1988 by granting leave and to pay him the entire back wages for the period between 29.2.1988 and the date of reinstatement within two months from the date of communication of this order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

15.11.1991