

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 432/89  
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DATE OF DECISION 16-1-1991

V.A.N. Namboodiri Applicant (s)

M/s MK Damodaran, CT Ravikumar Advocate for the Applicant (s)  
and KS Saira Versus

Secretary, Ministry of Communi Respondent (s)  
cations, New Delhi for Union of India and 3 others

Shri KA Cherian, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

N. Dharmadan, Judicial Member

The applicant is a Telephone Supervisor under the third respondent. His grievance is that a period of about three years service from 10-5-1982 to 14-2-1985 has been treated as 'Dies-non' without interruption in the service as per the impugned orders at Annexure-VIII *and* *it* was confirmed in Annexure-X by the Chief General Manager, Telecoms, Kerala Circle, Trivandrum.

2. It is necessary to narrate the facts leading to this application for appreciating the grievance. The applicant was the Secretary of the All India Telephone Engineering

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Employees Union, Class-III, Calicut Telephone District during 1982-83. He enjoyed immunity from transfer. But he was transferred from Calicut to Kavarathi Island, under the Divisional Engineer, Telephone, Ernakulam, as per the Annexure-I order dated 10-5-1982. He filed OP 6211/82-N on 17-8-82 before the High Court of Kerala challenging the transfer order and obtained the following interim order as stated in Annexure-II on 18-8-82.

"....Urgent notice and interim direction that status quo as on today is not to be disturbed for a month....."

3. The Original Petition was later heard and allowed by Annexure-III judgment dated 6-2-85. The General Manager Telecom with others who were respondents in the Original Petition, filed Writ Appeal No.142/85 against the judgment of the learned Single Judge. It was finally disposed of as per Annexure-VI judgment dated 5-12-1986 with the following observations:

"...It was brought to our notice by Shri Santhalingam learned counsel appearing for the appellants, that the disciplinary proceedings have since been dropped and therefore, the first objection does not survive any more. So far as the second objection that the respondents should not have been transferred within one year of joining service he being an office bearer of the Workers' Union, He submitted, that more than one year has since elapsed. Hence on this day the respondent

cannot put forward any objection for his transfer. Hence, without going into the merits of the case, all that we need to do is to dispose of the appeal with an observation that it is open to appellant, if considered necessary, to transfer the respondent in the interest of public service to any suitable place, as it is obvious that transfer is an incidence of service and the employee has no right to say that he cannot be transferred in the interest of public service. This appeal is disposed of accordingly. No costs..."

4. According to the applicant he was on leave from 9-5-82 to 26-6-82. The transfer order was never communicated to him and he was not relieved on 10-5-82. When he approached the 4th respondent on 28-8-82 with Annexure-II order to join duty he was not allowed. Annexure-IV is the copy of his letter indicating the offer to join duty. He was only permitted to rejoin duty on 15-2-1985, after Annexure-III judgment quashing the transfer.

5. In this background, it is submitted by the learned counsel, Shri MK Damodaran, that the applicant was forced to remain out of duty from 10-5-82 to 14-2-85 for no fault. In other words, he was kept out of service by the respondents and hence he is entitled to salary for the period. But the Senior Telephone Supervisor, Trunk

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(Administration) issued Annexure-VIII order dated 6-8-88, treating this period of absence as 'Dies-non' in the light of the Government of India's decision No.1 under Rule 25(2) of CCS(Leave) Rules 1972 without adverting to the above facts. The appeal preferred against the said order was also rejected arbitrarily without application of mind by Annexure-X dated 17-2-89.

5. Though the case was heard on 25-7-90, we found it difficult to decide the issue raised on the basis of the available records. Hence we directed the Central Government Counsel to produce the original records regarding the transfer and all connected proceedings. Accordingly, he produced the entire records of the case. We have carefully gone through the original records. They reveal that on getting information of the transfer the applicant submitted leave application for two days on 9-5-82 and left the office. Thereafter, he sent further applications for leave, but did not pursue them or verify whether they were sanctioned by competent authority. He was cleverly evading the service of the both the orders even though there was an earnest attempt on the part of the respondents

to serve them on the applicant. It is seen that these two orders were xxxx taken to his house on 10-5-1982 itself. The following is the relevant portion of the Peon Book of A.E., Auto-III Calicut dated 10-5-82.

"Extract of the Peon Book of A.E. Auto-III, Calicut, dated 10-5-1982."

Date	To whom	Contents of cover	Name of Peon	Signature of the receiver
	SS Auto	....	....	.....
	Shri V.A.N. Namboothiri	E-8/AE III/81 dated 10-5-82 E-13/Tfr/11/21 dt. 10-5-82		(Delivered in House) Sd/- 10-5-82 A. Jayaprakash, Peon, A.E. Auto Office"

7. The attempt to serve the order through postal authorities also failed. The remarks made by the Postman is extracted below:

"...Remarks made by the Postman of Calicut HPO on the cover addressed to Shri V.A.N. Namboothiri, 17/105-C, Near Sreekhandeswara Temple, Calicut-1 (RL No.12 dated 13-5-82 of Tiruvannur Nada) and by A.E. Auto-III, Calicut.

1. Absent - 14-5-82 Sd/- No.15 Re. Telephone Exchange, Calicut.
2. Enquiry - 17/5
3. On leave. Rd. to Original address Sd/- 18-5-82
4. Absent Sd/- 19-5-82
5. Door locked Sd/- 20-5-82 (No.15)
6. -do- Sd/- 21-5-82
7. -do- Sd/- 22-5-82
8. -do- Sd/- 24-5-82
9. Door locked 25-5-82
10. Door locked 26-5-82

11.

"Remarks made by Postman of Calicut HOP on the cover addressed to Shri V.A.N. Namboothiri T.S. 17/105-C Near Sreekahteswara Temple Calicut-1 sent by A.E. Auto-III Calicut-1 (RL No.1980 dt. 9-7-82 of Calicut-1)

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1. Not found 10-5-82 No.15

2. -do- 12/7

3. -do- 14/7

4. -do- 15/7

5- -do- 16/7

6- -do- 19/7

7. -do- 20/7

8- -do- 21/7

9. The addressee absent several days, hence could not delivered Sd/- 22-5-82 No.15

(Returned to sender) Calicut-1

Another letter dated 16-8-82 was sent by the Divisional Engineer, which reads as follows:

"..No: Q2634/3 dated at Cochin-11 the 16-8-82

Sub: Transfer and posting.

Ref: This office Telegram under No. Q 2634/4 dated 7.8.82

You have been transferred and posted to Kavaratti Exchange under this Division during May 82 and it is reported that you have not joined there so far. The leave application for the period from 9.5.82 to 26.2.82 are rejected as absence from 26.6.82 till date is also unauthorised.

Therefore, you are hereby directed to report for duty at Kavaratti forthwith....."

Thereafter a telegram dated 26-10-1983 was also sent by the District Engineer, Telegram, Cochin to the applicant

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directing him to report for duty at Kavaratti island before 7-11-1983 and failure would result in treating the entire period as 'Dies-non'. The said telegram is extracted below:

"XT/1730/24TH

- (1) VAN NAMBOODIRI TELEPHONE SUPERVISOR (ABSENT)  
17/105-C BEAR SREE KANTESWARA TEMPLE  
KOZHIKKODE - 673 001
- (2) ASST. ENGR. P & T WIRELESS KAVARATTI-673 553

Q 2634/9 aaa ALL COMMUNICATIONS SENT TO YOUR LAST KNOWN ADDRESS RECD BACK UNDELIVERED aaa YOUR CONTINUOUS ABSENCE SINCE 11-5-82 REPEAT ELEVENTH MAY NINETEEN EIGHTY - TWO UNAUTHORISED aaa REPORT DUTY AT KAVARATTI BEFORE 7-11-83 REPEAT SEVENTH NOVEMBER NINETEEN EIGHTY THREE aaa FAILURE TO REPORT DUTY BEFORE TARGET DATE WILL ENTAIL TREATING ENTIRE PERIOD AS DIES NON WITH BREAK IN SERVICE WITHOUT PREJUDICE TO DISC.ACTION THAT MAY BE DECIDED UPON aaa ADDSD VAN NAMBOODIRI COPY AE W KAVARATTI

Sd/- DET ENK  
Divisional Engineer, Telegraphs  
Ernakulam, Cochin 682 011

Endt. No.Q 2674/9 dated at Cochin-682 011 26-Oct. 1983"

Following this telegram a carbon copy of the telegram containing the message was sent by post in confirmation by registered post with acknowledgment on 26-10-83 itself. These communications had been received by the applicant on 3-11-1983 and 15-11-83 as per the acknowledgment cards in the files. But there is no indication in the files that the applicant responded to them or reported for duty pursuant to the telegram and the message.

8. The applicant was relieved from duties on 10-5-1982 itself. This is clear from the letter sent by the Assistant Director(Staff) in the office of GMT, Trivandrum dated 13-8-1982. The letter reads as follows:

"..To

The D.E. Telegraphs,  
Quilon/Tiruvalla/Ernakulam/Kasargod  
The District Manager Telephones, Kozhikkode.

No.ST/30-24/Rlgs/II Dated at Trivandrum, the 13-8-1982

Sub: Non reporting of officials to new places of postings

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It has been reported that the following officials who are relieved on transfer on the dates shown against them have not yet reported to their new places of posting in spite of considerable time thus amounting to absconding from duty. The nature of action taken against erring officials may please be intimated immediately for the information of the GMT.

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Name & Designation Dt. of Tfr D/o New place of posting  
relief  
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xxxxxxx	xxxx	xxxxx	xxxx
xxxxxxx	xxxx	xxxxx	xxxxx
xxxxxxx	xxxx	xxxxx	xxxxx
V.A.N. Namboodiri, TS, Calicut Phones Dist.	10-5-82	10-5-82	Kavaratti under DET EK
xxxxxxx	xxxxx	xxxxxxx	xxxxxxx

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Matter may please be treated as urgent

Sd/-

(R. Ganresh Pillai)  
Assistant Director(Staff)  
for G.M.T. Trivandrum - 33

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9. It is further clear from the proceedings No.Q-2634/19 dated 24-10-83 sent by the Divisional Engineer, Telegraphs, Ernakulam to the Director Telecom (South), Trivandrum stating that the earned leave applied for by the applicant on 9-5-1982 and 10-5-82 had not been sanctioned by the DMT(CT). The said proceeding extracted below:

"..The Director (Telecom) (South),  
Rajadhani Bldg. Fort,  
Trivandrum 695 023

No.Q-2634/19 dated at Cochin - 682 11 the 24th  
November 1983.

Sub: Shri V.A.N. Namboodiri, TS transferred from  
CT Tele. Dist. to this Division in May '82  
Not yet reported.

Ref: GMT TVM letter No.ST/30-24/Rlgs/II dated  
13-8-82

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Sri V.A.N. Namboodiri, TS has not yet reported for duty despite telegram sent to his last known address on 7-8-82 and 24-10-83 letter No.Q-2634/5 dated 16-8-82 sent to him had been received back undelivered with postal remarks "Door locked", "Not found several times, so ret'd to sender", etc. etc. Copy of the telegram of 24-10-1983 sent to his permanent address by regd ack due post has been acknowledged by him on 3-11-83.

2. It is seen that prior to his relief on 10-5-82 from the Calicut Tele Dist., Sri Namboodiri was on EL on 9 & 10-5-82. The said spell of leave had not been sanctioned by DMT CT. The relative application has been received in this office under cover of letter No.E-8/III/99 dated 7-7-82 from AE(Auto-II) CT. Subsequent to the relief, the official had preferred applications for leave without MC in spells of 31 days or less upto 30-11-82 for "union activities". Thereafter, there has been no information from the

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official. This office is not inclined to sanction the leave. As the total spell is more than 120 days, the undersigned is not competent to issue orders treating the period as 'dies non'. It is suggested that orders treating the entire period since 11-5-82 as 'dies non' may be issued by Tele(S).

3. The spell 9-& 10-5-82 will be referred back to DMT CT.

4. As the continued unauthorised absence appears to be deliberate and as it is felt that the offence calls for action under rule 14 of CCS(CCA) Rules, it is suggested that suitable action may be initiated by the Area Office as the official has not yet joined in this division.

Divisional Engineer,  
Telegraphs, Ernakulam.."

10. We have appreciated the contentions of the parties in the light of the above materials from the files. The earnest attempts of the department to serve the xxx orders of transfer and relief were defeated by the cleverness of the applicant. But ultimately after the receipt of the telegram, the applicant failed to respond the same. Under these circumstances, we cannot accept the case of the applicant, that when Annexure-II order of status quo was obtained from the High Court on 18-8-1982, he was <sup>not</sup> in service but on leave. The leave was never granted by the competent authority.

11. No government servant can claim leave as of right. Normally, when an application for leave is submitted

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it is incumbent upon the applicant to verify and find out whether it is being sanctioned by competent authority. If it is not sanctioned he cannot afford to keep quiet and continue to be absent from duty as if it is sanctioned.

Of course in case of sudden illness or extreme urgency leave without prior sanction can be allowed to an official who has at his credit earned leave, casual leave etc.

(See Siva Prasad V. State of U.P., 1983 (1) SLJ 524. But in the instant case admittedly leave applied for was not sanctioned. The applicant has no case that ~~there~~ was sudden illness or extreme urgency for grant of leave.

He sent as many as half a dozen applications for leave but did not verify whether they were sanctioned. Presumably after giving credit for all eligible leave the telegram was sent by the respondents in 1983 directing the applicant to come and join duty. He was also informed about the penal consequences. Even after such a telegram the applicant did not care to join duty.

12. The claim of the applicant that he approached the 4th respondent on 28-8-82 with the interim order for joining duty but he was not allowed to join duty cannot be believed on the fact and circumstances of the case. The department files and connected records produced before us do not contain any such letter dated 28-8-1982 alleged to have been submitted by the applicant before the Assistant Engineer. He has no case that he had withdrawn leave

from 28-8-82. On the other hand it is admitted in para 14 of the rejoinder that he was on leave on 28-8-82, and the leave applied was not granted. The following details in his rejoinder are relevant.

"...The applicant had regularly submitted his leave applications to AE Auto III, Calicut. Later they were forwarded by AE Auto-III, Calicut to DET Ernakulam and the details of the leave application are given below:

<u>Leave taken</u>	<u>No. of days</u>	
1. from 9-5-82 to 10-5-82	2 days	Earned leave
2. 11.5.82 to 25-5-82	15 days	-do-
3. 26.5.82 to 9.6.82	15 days	-do-
4. 10.6.82 to 10.7.82	30 days	-do-
5. 11.7.82 to 31-7-82	21 days	-do-
6. 1-8-82 to 31-8-82	31 days	-do-

The above leave applications were later forwarded to DET. ENK, by AE Auto-III vide the following Endts.

1. E.8/III/88 dated 5-6-82
2. E.8/III/99 dated 4-7-82
3. E.8/III/122 dated 7-8-82
4. E.8/III/123 dated 12.8.82

It is submitted that leave applications from 1-12-1982 was returned to the official vide AE Auto-III Calicut vide letter N.E.8/III/182 dated 21-12-1988 stating that 'you are not working in this Unit'. Before that all the leave applications accepted by AE Auto-III Calicut..."

13. From these facts it can be seen that the applicant had not made any earnest attempt to join duty either on 28-8-82 or on any day after receipt of the telegram in 1983. Under these circumstances, we are of the opinion that there is no truth in the statement that the applicant made earnest attempt to join duty on 28-8-82

or any day before the final judgment in OP 6211/82 dated 6-2-85, and the respondents refused permission to join duty.

14. There is also no merit in the submission that the applicant is entitled to full salary for the period from 10-5-1982 to 14-2-1985 because of the fact that there is no fault on him. Even though he has stated in the Original Application that the transfer order was not served on him and he was on leave on 9.5.82 and 10.5.82, he has not produced any material to show that the leave applications filed by him was sanctioned by the competent authority. On the other hand evidence available in the files indicates that all the leave applications were belated and they were rejected. His further contention that there is admission by the respondents as indicated in the judgment in OA 6211/82 that the applicant was on leave and that status quo should be maintained in the light of interim order because of the default of the government counsel who appeared before the High Court in moving for vacating the order of status quo cannot be accepted. The Vigilance Officer who filed the counter affidavit in the O.P. 6211/82 on 27th September 1982 stated that the petitioner was relieved from Calicut on 10-5-1982 and the substitute from Ernakulam joined duty at Calicut on 2-8-82. Hence, no further action was taken to vacate the order of status quo passed on the CMP 17642/82. The applicant neither controverted this statement by filing any rejoinder nor moved the High Court for taking action for violation of

the order of Status quo when he was not allowed to continue in service if he was really in service at the relevant time, as contended by him.

15. Even though the Original Petition No.6211/82 was allowed by the Single Bench, finding that the transfer order is illegal, nothing was mentioned in the judgment with regard to his eligibility for the salary during the period of absence commencing from 10-5-82 till the date of judgment. The judgment in the Writ Appeal 142/85 is also silent on this aspect. The respondents are, therefore, right in their conclusion that since the High Court did not issue specific directions for treating the period of absence of the applicant as duty either by the Single Bench or Division Bench they are free to deal with <sup>it</sup> ~~in~~ accordance with law taking into account the conduct of the applicant. They had warned the applicant as early as in 1983 that the whole period would be treated as 'Dies-non' if he would fail to report for duty after the receipt of the telegram. Since he did not obey the directions in the telegram, the respondents passed the impugned order in the light of decision No.1 of Government of India under Rule 25 of the CCS (Leave) Rules. The relevant portion of the decision is extracted below:

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"...Wilful absence from duty, even though not covered by grant of leave does not entail loss of lien. The period of absence not covered by grant of leave shall have to be treated as dies non for all purposes, viz. increment, leave and pension...."


16. A government servant who absents himself or remained on leave which was not granted is to be treated as a person who abstained himself from duty. In such case he should be apprised of all the consequences that the entire period of absence would be treated as 'unauthorised absence'. In the instant case, the telegram and subsequent registered letters sent to the applicant had been received by him. But he did not respond to them. He remained absent even after the receipt of the telegram without bringing the matter to the notice of the High Court in OP 6211/82 for staying such action contemplated in the telegram. This only indicates that the applicant was not really keen in joining duty. He was waiting for a judgment from the Court to approach the respondents. When he got the judgment with the limited relief of quashing the transfer but without any relief as regards to the period of absence from 10-5-1982 to 14-2-1985 he put pressure on the respondents and joined duty on 15-2-1985. He was satisfied with it. All that time he did not insist for full salary for the above period as a condition for joining duty. He waived the right for salary as claimed in this case.

17. Considering the facts and circumstances of the case, we are of the view that the failure of the applicant to obtain appropriate direction for getting full salary during the period of his absence, from the High Court

earlier in O.P. 6211/82 or in Writ Appeal 142/85 or at least at the time of joining duty on 15-2-1985 as condition for joining duty is fatal. He is not entitled to the relief. I am satisfied that the conduct of the applicant in having evaded the service of the order of transfer and relief disentitles any of the reliefs claimed in the application. I am of the view that the applicant deliberately avoided joining the duty till the judgment at annexure-III inspite of warning from the department at the appropriate time.

18. In the result, the applicant is not entitled to any relief as prayed for in the application and it is liable to be dismissed.

19. Accordingly, the Original Application is dismissed.  
I make no order as to costs.

  
(N. Dharmadan) 15.1.91  
Judicial Member



N.V.Krishnan, Administrative Member

20. I agree with the judgement of my learned brother. I would, however, like to highlight two matters.

21. I felt that if the applicant was really on leave for 3 months to begin with, and that he remained unauthorisedly absent only thereafter for a long period, his case should have been dealt with under Rule 25 of the CCS Leave Rules, 1972, Leave Rules, for short. When this issue was raised the learned counsel of the applicant drew our attention to the observation of the High Court of Kerala in its judgement in OP 6211/82 that, admittedly, the petitioner was on leave for 3 months and the transfer was effected when he was on leave. He, therefore, contended that it was not now open to the respondents to claim that, in fact, the applicant had not been granted any leave at all.

22. I am of the view that the aforesaid observation of the High Court cannot be pressed into service when the question of regularising the period of absence of the applicant is taken up by the respondents, particularly when the High Court of Kerala has not issued any direction in this behalf either in OP 6211/82 or in the subsequent writ appeal 142/85.

23. A perusal of the records produced by the respondents shows that in fact, they had stated as follows in the counter affidavit filed by them in the OP.

"It is true that the petitioner was on leave at the time of issuance of Ext. R1. On 10.5.82 the petitioner was relieved of his duties as

Telephone Supervisor at Calicut Division and as a consequence of that the substitute transferred from Ernakulam joined duty on 2.6.82."

It is, however, noteworthy that the applicant did not produce with his OP any document to prove that leave had been sanctioned to him. The departmental records show that the applicant was abstaining himself from duty after submitting an application for leave for 9.5.82 and 10.5.82, which had not been sanctioned. It is seen that the transfer order was passed on 10.5.82 relieving him when he had submitted this application. Therefore, the aforesaid admission in the counter affidavit can only mean that the applicant had remained absent on 9.5.82 and 10.5.82 after applying for leave.

24. This was followed by leave applications dated 10.5.82, 25.5.82 and 10.6.82 covering periods from 11.5.82 to 25.6.82. All these applications were disposed of by the letter dated 16.8.82 of the Divisional Engineer, Telegraph, Ernakulam, to whom the leave applications were referred for orders. He rejected the various leave applications for leave from 9.5.82 to 26.6.82. He also informed the applicant that his absence after 26.6.82, after the expiry of the period of leave last applied for, is unauthorised.

25. In the circumstances, the records show that no leave had been sanctioned to the applicant at any time

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either immediately before the transfer order was passed on 10.5.82 or thereafter. Therefore, the question of the applicant being given the benefit of Rule 25 of the Leave Rules does not arise at all.

The respondents have rightly invoked the Government of India's decision No.1 under that Rule which covers cases of wilful absence from duty not covered by grant of leave as in the present case.

26. The other matter is the subsequent conduct of the applicant which makes it clear that he has deliberately flouted the transfer order issued to him and that, therefore, he does not deserve any leniency. It is true that the High Court of Kerala issued an interim order on 18.8.82 to maintain the status quo. The effect of an interim order of this nature will really depend on what the 'status quo' is. According to the respondents, the applicant had already been relieved on 10.5.82 to proceed on transfer to Kavarathi and therefore, he should have joined duties there. However, the applicant submits that he was on leave and therefore, according to his perception, the status quo meant that the transfer order was of no consequence and that on the expiry of his leave he could report for duty at Calicut itself. It is on this basis that the applicant allegedly went to the 4th respondent's office at Calicut on 28.8.82 to report for duty (Ann.IV) but was not permitted to do so.

27. I am of the view that, in the circumstances, the applicant had only one course of action open to him, viz., to approach the High Court of Kerala either to initiate

contempt proceedings against this respondent or to seek a clarification of the interim order as to its import and consequence after his alleged leave expired. Better still, he could have prayed for an interim direction permitting him to join duty at Calicut, pending the disposal of the petition. No such <sup>u</sup>action was taken. Instead, he went on applying for leave till 30.11.82 and sat at home till the OP was disposed of on 6.2.85 and he was conditionally permitted to join duty on 15.2.85.

28. The learned counsel of the applicant seriously submitted that in accordance with the procedures and practices obtaining in the High Court of Kerala, such action could not have been taken. I am amazed at this incredible submission which I reject, for, it appears to me to cast an aspersion on the High Court of Kerala suggesting that its doors are not open to an applicant seeking a legitimate and relevant clarification of an interim order or seeking an appropriate order to meet the ends of justice. That apart, the applicant indeed got an opportunity to move the High Court of Kerala as indicated above. On 16.9.82 (i.e. after he was allegedly denied permission on 28.8.82 to join duty) CMP 17642/82 came up before the High Court and, after hearing the learned counsel for the applicant who appeared for the petitioner in that CMP also, the High Court passed an

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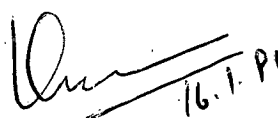
order extending the interim direction dated 18.8.82 until further orders.

29. That apart, the applicant had all along not been given any salary and allowances for this period. Yet, he neither represented to the respondents demanding payment of salary and allowances nor thought it fit to seek a direction from the High Court.

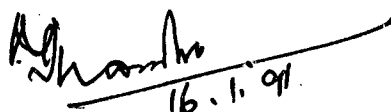
30. In the circumstances, I am of the view that the applicant should have joined duty at Kavarathi as the operation <sup>of</sup> the impugned order transferring him to Kavarathi had not been stayed by the High Court. By not reporting for duty, he remained wilfully and unauthorizedly absent all along. In any case, he was bound to approach the High Court of Kerala for proper directions when he was not allegedly permitted to join duty on 28.8.82. The interim order issued by the High Court did not authorise him to cool his heels at home for nearly three years and to claim pay and allowances for that period.


31. In the circumstances, I am of the view that the treatment meted out to him by the impugned order by treating the period of absence as qualified dies non cannot be assailed. The applicant richly deserved this treatment which he invited upon himself, despite his being warned about such a consequence as early as in 1982.

32. With these observations, I fully agree with my learned brother that the application deserves to be dismissed.

  
(N.V. Krishnan)  
Administrative Member

33. We are of the view that there is no substance in this application and it is liable to be dismissed. Accordingly, we do so. There will be no order as to costs.

  
(N. Dharmadan)  
Judicial Member

  
(N.V. Krishnan)  
Administrative Member

16-01-1991

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

RA 19/91 in O.A. No. 432/89

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DATE OF DECISION 20-3-1991

MK Damodaran Applicant (s)

Mr CK Sivasankara Panicker Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)  
Secretary, Ministry of Communications  
New Delhi and others.

Mr KA Cherian, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member.

The Hon'ble Mr. N Dharmadan, 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

Shri NV Krishnan, Administrative Member

This review application is filed by Shri MK Damodaran, Advocate. He was the counsel for the applicant in OA 432/89 which was disposed of by a judgment dated 16.1.91, of the Bench consisting of the Hon'ble Shri N Dharmadan, Member (Judicial) and me. The leading judgment was that of my learned brother who dismissed the application and, concurring with his judgment, I had also recorded my views in few paragraphs.


2 Shri MK Damodaran, Advocate, the review applicant, submits that he is aggrieved by the first two sentences of para 28 of the judgment delivered by me. He, therefore, seeks a review of para 28 of the judgment and prays that the first two sentences thereof be deleted and avers that <sup>this</sup> will not, in any manner, affect

the judgment. He pleads that he did not mean to make any submission in the terms couched as in the first sentence which resulted in my critical observations and <sup>decisions</sup> / in the second sentence. He submits that he never intended to make any such submission and regrets that he has left such an impression on me while hearing arguments in the original case.

3 The applicant states that if para 28 of that judgment is not reviewed and the first two sentences are not deleted as prayed by him, they will form part of the record, though he never intended to make any such submission as mentioned therein, and, he apprehends that this will result in irreparable injury to him.


4 The applicant has also filed separately an affidavit in support of the review application.

5 In view of the submissions made by the applicant, which are supported by an affidavit, I do not find it necessary to discuss the matter any further except to state that the first two sentences of para 28 were recorded after due deliberation. Nevertheless, in the light of the submissions made by the applicant as also to avoid any possible or apprehended injury to the applicant, I do not wish these two sentences to remain on record. Their deletion will not affect the judgment in any way.





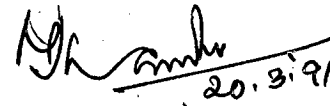
6 Hence, I have no objection if the prayer made by the review applicant is accepted.


  
(NV Krishnan)  
Administrative Member  
20-3-1991

ORDER OF THE BENCH

7 In the light of the foregoing observations by one of us (NV Krishnan) and after hearing counsel on both sides we are of the view that in the circumstance of the case it is necessary in the interest of justice to review para 28 of our judgment dated 16.1.91 in OA 432/89 by deleting the first and second sentences of that paragraph. We do so. Para 28 of that judgment after such review will read as follows:

" 28. That apart, the applicant indeed got an opportunity to move the High Court of Kerala as indicated above. On 16.9.82 (i.e. after he was allegedly denied permission on 28.8.82 to join duty) CMP 17642/82 came up before the High Court and, after hearing the learned counsel for the applicant, who appeared for the petitioner in that CMP also, the High Court passed an order extending the interim direction dated 18.8.82 until further orders".

  
(N Dharmadan)  
Judicial Member

  
(NV Krishnan)  
Administrative Member

20-3-1991