

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 448/97

Tuesday, this the 18th day of August, 1998

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

M. Nazar,
S/o. Meera Sahib,
Extra Departmental Mailman,
Railway Mail Service, Quilon,
residing at Panavila Thekkethil, Quilon-2.

...Applicant

By Advocate Mr. M.R. Rajendran Nair

vs.

1. The Sub Record Officer,
Railway Mail Service,
Trivandrum Division,
Sub Record Office,
Kollam.
2. The Senior Superintendent,
Railway Mail Service,
Trivandrum Division,
Thiruvananthapuram.

...Respondents

By Advocate Mr. P.R. Ramachandra Menon, ACGSC

The application having been heard on 18.8.98, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant while working as an Extra Departmental Mailman in the Railway Mail Service submits that on 18.4.92 he was granted leave without allowance. He did not rejoin duty on expiry of the leave but submitted an application for extension of leave. He finally reported for duty on 15.3.96 but was not allowed to join duty. Instead, he was informed that he had been removed from service for unauthorised absence. Applicant submits that being a holder of a Civil

post, he cannot be removed from service without following any procedure. He has not been heard before he was removed from service. There is also nothing to show that respondents have followed the procedure required for ex parte proceedings. Applicant therefore prays that he may be declared entitled to join duty and for a direction to the respondents to permit the applicant to join duty and also to pay him full wages for the period from 15.3.96 for which he was illegally kept out of service and to treat that period as duty.

2. Respondents submit that applicant absented himself unauthorisedly from duty with effect from 5.3.92 without submitting any leave application and without producing his substitute as required under the rules. His contention that he was granted leave without allowance on 18.4.92 is totally false and is denied. It is also denied that he had submitted an application for leave. A Registered letter was sent on 16.7.92 directing the applicant to join duty forthwith. The letter was received back on 29.7.92 as undelivered with the remark that there was no such addressee. Thereafter yet another letter was issued to the applicant by registered post by the first respondent who is the competent disciplinary authority on 3.9.92 proposing to initiate disciplinary enquiry against the applicant for unauthorised absence. This notice was returned undelivered with the endorsement 'Addressee left India'. Thereafter proper notices of enquiry were issued to the applicant by post and were received back undelivered. The enquiry was conducted wherein the applicant who did not turn up was declared ex parte in accordance with the rules. Copies of proceedings were sent from time to time to the applicant by post; all of which were returned undelivered with the endorsement 'Addressee left India'. A copy of the enquiry report dated 30.12.92 was also forwarded to the applicant to his last known address directing him to submit his

representation if any and this letter was also returned undelivered. A final order removing the applicant from service was issued on 6.2.93 and the copy of the order (R-1) was sent to the applicant by registered post which was also returned back with the postal remark 'Addressee left India'. The applicant did not attend office till 22.5.96 nor did he prefer any appeal against R-1 order. Respondents therefore submit that the disciplinary action taken against the applicant is in accordance with the Rules 63 and 64 of the P&T Manual, Volume III.

3. The learned counsel for the applicant submits that the Supreme Court in Dr.R.C. Thyagi Vs Union of India 1994(1) SLR, page 838 held as follows:

" No charge-sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement 'left without address' and on other occasion, 'on repeated visits people in the house that he has gone out and they do not disclose where he has gone. Therefore, it is being returned'. May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed *ex parte* unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under Postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to.

And from the endorsement it is clear that the envelope containing charge-sheet was returned. In absence of any charge-sheet or any material supplied to the appellant it is difficult to agree that the enquiry did not suffer from any procedural infirmity. "

Section 3(c) of the Indian Post Office Act, 1898 states as follows:

" the delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee. "

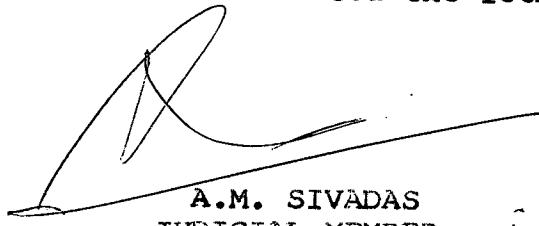
The learned counsel for applicant submits that the respondents therefore have not taken recourse to all the methods available to them for serving notices on the applicant and therefore the order of removal passed by the respondents would not be binding on the applicant.

4. After hearing both sides at considerable length, we consider that since a copy of the order of removal has now been made available to the applicant (R-1), the applicant can now avail himself of the opportunity of approaching the appellate authority for relief. He is free to raise all the contentions raised here regarding the service of notice before the appellate authority. We permit the applicant to file an appeal before the second respondent within 30 days. If such an appeal is filed within the time stated above, the appeal shall be deemed to be within time and the second respondent shall consider it and pass appropriate speaking orders within two months from the receipt of the

appeal. The second respondent shall keep in mind while considering the appeal, the Supreme Court decision and the provisions of the Indian Post Office Act, 1898 referred to above.

5. Application is disposed of as above. No costs.

Dated the 18th day of August, 1998.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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LIST OF ANNEXURE

Annexure - R1 : True copy of the Proceedings
dated 6.2.1993 of the first
respondent.

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