

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 449/96

Monday, this the 19th day of January, 1998.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

K. Radhakrishnan,
Extra Departmental Messenger,
Puvar Post Office.
Residing at Adikkalathuvilakom,
Puvar P.O. - 695 525, Neyyattinkara.

By Advocate Mr Abraham Kurian.

...Applicant

Vs.

1. The Sub Divisional Inspector of Post Offices,
Neyyattinkara - 695 121.
2. The Superintendent of Post Offices,
Trivandrum South Division,
Trivandrum - 695 014.
3. The Chief Postmaster General,
Kerala Postal Circle,
Trivandrum - 33.
4. Union of India, represented by Secretary,
Government of India,
Ministry of Communications, New Delhi.

...Respondents

By Advocate Mr T.P.M. Ibrahim Khan, Sr. CGSC.

The application having been heard on 19.1.1998,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A1, A4 and A12 orders.

2. The applicant while working as Extra Departmental Messenger in Puvar Post Office was absent from duty for 83 days from 8.12.88 to 28.2.89. During that period he was on leave without allowance. Thereafter, the applicant was on unauthorised absence. According to the applicant, he was under treatment for a prolonged period and instead of getting medical certificates for short periods, he thought of getting one medical certificate

for the whole period after the treatment. He also says that he thought of applying for leave with medical certificate, if and when necessary. Disciplinary proceedings were initiated against the applicant.

3. As per A1, the first respondent removed the applicant from service with immediate effect. A12 is the order on the review petition submitted by the applicant rejecting the same.

4. Learned counsel appearing for the applicant submitted that for the purpose of engaging a helper to him, a departmental hand, only two days' time was granted by the Enquiry Officer. From the materials produced by the applicant himself we are unable to agree with this submission. A3 dated 7.2.92 specifically says that "you may obtain the services of an AGS where it is available". 'You' there refers to the applicant. Memo of charges (A5) is dated 18.6.91. The first sitting of the enquiry authority was held on 18.11.91 at 2 P.M. Then there were several sittings subsequently. This is brought out by the enquiry file which was made available. From a perusal of the file also it is clearly seen that the contention of the applicant that he was given only a couple of days' time to engage a helper to defend his case cannot be acceptable for the moment. The learned counsel appearing for the applicant argued that no helper, a Government servant, was available to the applicant. It is pertinent to note that the applicant has not made any specific request for extending time to avail the services of a helper, a Government servant, specifying the name of the concerned Government servant. During the course of argument we wanted to ascertain from the learned counsel for the applicant whether the applicant had anybody in his mind as a person of his choice to defend him in the departmental proceedings. No name was specifically mentioned. It was only

mentioned that no Government servant was available. It is also pertinent to note that the applicant had not filed any written statement of defence after memo of charges accompanied by the statement of allegations was served on him. At no point of time the applicant had submitted defence witnesses list and the documents that he would like to rely on for his defence. The nature and conduct of the applicant is well reflected in A6 submitted by the applicant to Assistant Superintendent of Post Offices, Trivandrum Sub Division in vernacular. An English translation of it is also produced. It will be better to extract a portion from the vernacular itself as the English translation will not convey the exact intention and meaning. In A6, it is stated that:

"Asst. 22/09/90 on enquiry by 2/9/90 to a Brds m/s"

This shows that the applicant was not inclined to take part in the proceedings. It is not a case where he wanted to get a fair chance for defence. One can understand the delinquent Government servant seeking time to have a fair chance to defend his case, but refusal to take part in the enquiry is something entirely different which cannot be appreciated. A delinquent Government servant who refuses to take part in the enquiry cannot come forward and plead that there is violation of natural justice. The principles of natural justice will not extent to a delinquent Government servant who refuses to take part in the proceedings.

5. Learned counsel appearing for the applicant drew our attention to the ruling in V. Srinivas Reddy Vs. Union Bank of India, Bombay and another (1989 LAB IC 929) wherein it has been held that engaging a counsel is a step in the fair play in the action and it is not necessary that the presenting officer who is assisting the disciplinary authority should be a legal

practitioner for the purpose of allowing the delinquent Government servant to avail the service of a legal practitioner. There, it was a case dealing under Union Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976. It is relevant to note that the regulation itself envisages to seek the assistance of a legal practitioner. Here, it is a case where Rule 14(8) of CCS (CC & A) Rules apply. As per the said provision, the delinquent Government servant can engage a legal practitioner only, if the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case so permits. In the case relied on by the learned counsel for the applicant, the charges were of a very serious nature. Case was also there against the delinquent for the offences punishable under Sections 420 and 377-A of the IPC and Section 5(2) read with Section 5(1) (c) and (d) of the Prevention of Corruption Act. Here, the charge against the applicant is very simple i.e., unauthorised absence. The case of the applicant is that he was on prolonged treatment due to some ailment. If that is so, that is a fact that he could have very well brought to the notice of the authority concerned even while he was undergoing treatment, or at least when he was called upon to file his written statement of defence. For the reasons best known to him he felt it rather more convenient not to open his mouth than to say all these things. It is now submitted by the learned counsel for the applicant that the applicant was under treatment and A14 certificate issued by the Doctor who treated him would reveal that he was unable to attend duty. A mere perusal at A14 is sufficient to say that one cannot come to any conclusion as to the inability of the applicant to attend duty. A14 only says that from 1.5.89 to 24.11.91 the applicant was under the treatment of the Doctor who issued A14. It does not say whether

the applicant was an inpatient or outpatient. It does not say that the applicant was not in a position to do any work, or that he was advised rest. It is less said the better about A14. In A14, the diagnosis is stated as 'Keelvahum'. We asked learned counsel for the applicant what exactly is this particular disease and the learned counsel submitted that it may be a Tamil term on which he is not able to enlighten us. At this juncture it is also pertinent to note that on 18.11.91 the applicant appeared in person before the enquiry officer. If the applicant was actually prevented from moving about, he could not have made himself physically present on 18.11.91 when A14 says that he was under treatment from 1.5.89 to 24.11.91. So, for these reasons the ruling relied by the learned counsel for the applicant that the Enquiry officer ought to have permitted the applicant to engage a lawyer cannot be accepted. Apart from that, there is one more reason for not accepting the argument based on the said ruling. In that case the request for engaging a lawyer by the delinquent was made at the earliest point of time. In this case the applicant has not at the earliest point of time sought permission to engage a lawyer but that request has come only at a late stage. So, on this ground the said ruling cannot be applied to the facts and circumstances of the case at hand.

6. Learned counsel for the applicant argued that the applicant was left without any defence for the reason that he could neither get a helper, a Government servant, nor was he permitted to engage a lawyer. As far as non-permitting the lawyer to appear for the applicant, we have already stated. The disciplinary authority was well within his right in not granting permission in this case for the applicant to engage a lawyer. As far as the helper, Government servant is concerned, the applicant has only stated vaguely that no Government servant

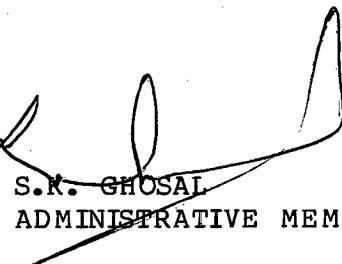
was available without specifying the name of any Government servant. The delinquent Government servant cannot be allowed to attack the order passed against him imposing penalty on the ground that he was not able to avail the services of a helper or a lawyer in this case.

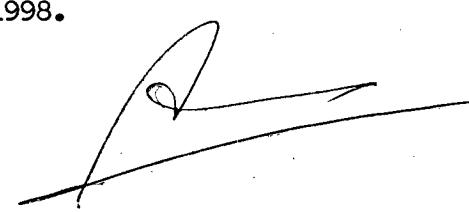
7. Another argument advanced by the learned counsel for the applicant is that the actions of the first respondent-disciplinary authority and the enquiry officer are mala fide. It is not enough to allege mala fides. There should be evidence to establish mala fides and that evidence has to be strong and convincing. That apart, if mala fide is alleged against somebody, that somebody should be brought in the party array by name. Here, though mala fides are against the first respondent and the enquiry officer, they are not in the party array by name. So, on the grounds that the first respondent and the enquiry authority are not brought in the party array by name and there is no evidence, much less any strong and convincing evidence as to the mala fides, the plea of mala fides cannot be accepted. Here, it is not a case where the concerned authorities have not followed the principles of natural justice or the procedure laid down to be followed in a disciplinary proceeding. It is a case where reasonable opportunity was afforded to the applicant and the applicant did not avail and rather preferred not to take part in the enquiry proceedings. So, we do not find any ground to arrive at a conclusion that there is any violation of the principles of natural justice.

8. None of the grounds argued by the learned counsel for the applicant could be accepted.

9. We do not find any ground to quash A1, A4 and A12 and accordingly, the Original Application is dismissed. No costs.

Dated the 19th of January, 1998.


S.K. GHOSAL
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

P/19-1

LIST OF ANNEXURES

1. Annexure A1: Proceedings No.EDMes/Puvar dated 23.6.1992 issued by the first respondent to the applicant
2. Annexure A3: Letter No.ED.Mess/Puvar dated 7.2.1992 issued by the first respondent to the applicant.
3. Annexure A4: Memo No.ED Messenger/Puvar dated 7.2.1992 of the first respondent to the applicant.
4. Annexure A5: Memo No.EDM/SO/18 dated 18.6.1991 issued by the first respondent to the applicant.
5. Annexure A6: Petition dated 23.12.1991 submitted by applicant to K.S. Nair, ASP, Trivandrum South alongwith English translation.
6. Annexure A12: Order No.ST/E-3/97 dated 19.7.1995 issued by the third respondent the Revisional Authority to the applicant.
7. Annexure A14: Medical Certificate dated 3.1.1992 issued by Dr.D.Kumaradhas, B.I.M, Adline Hospital, Karungal, Kanyakumari District to the applicant.

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