

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 462/89 199  
~~XXXXXX~~

DATE OF DECISION 25.6.90

K.Ravikumar Applicant (s)

O.V.Radhakrishnan Advocate for the Applicant (s)

Versus

Inspector of RMS Respondent (s)  
RMS 'TV' 2nd Sub Division, Kottayam &  
6 others.

T.P.M.Ibrahim Khan Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. A.V.Haridasan, 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? Yes
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

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 11th July, 1989 filed under section 19 of the Administrative Tribunals Act, the applicant who had been working as an Extra Departmental Mailman, Kayamkulam under the Senior Superintendent, RMS, Trivandrum Division, has prayed that the Director General, P&T's circular dated 24th February, 1970 (Exbt. A-17) should be declared as unconstitutional. His further prayer is that the chargesheet dated 23.5.88 at Exbt. A-7, the order of punishment removing him from service dated 16.11.88 at Exbt. A-11, the Enquiry Report at Exbt. A-12, the appellate

order dated 17.2.89 at Exbt. A-14 rejecting his appeal and the order of the Postmaster General dated 12.4.89 at Exbt. A-16 rejecting his petition, should <sup>be</sup> set aside and the respondents be directed to re-instate him with immediate effect. The brief material facts of the case are as follows:

2. The applicant while working as ED Mailman of Kayamkulam RMS met with an accident while travelling in a private trekker conveying the mails on 24.8.84 and underwent treatment in the Government hospital till 29.8.84. According to the respondents, the applicant <sup>thereafter</sup> made it a practice to absent himself from duty with or without leave on the pretext of medical treatment. His representation dated 25.7.85 for transfer to some other post where frequent travels would not be necessary could not be accepted but the Sub Record Officer, Kayamkulam was informed that he might be granted leave without allowance till he recovered from illness. The applicant had availed of leave for 214 days from 4.10.86 to 5.5.87. In accordance with the DG, P&T's instructions, an ED Agent who remains on leave for more than 180 days at a stretch would cease to be an ED Agent. In accordance with Rule 5 of the P&T ED Agents (Conduct and Service) Rules 1964, if an ED Agent remains absent from duty either on leave or otherwise for a period exceeding 180 days, he shall be removed from service after following the due procedure laid down in Rule 8. According to the

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respondents, the Sub Record Officer, Kayamkulam who granted leave and was competent to take action against the applicant failed to take cognizance of this either wilfully or otherwise and the applicant continued to be in service though he had no right to continue as ED Agent and was liable to be removed from service.

According to the applicant, leave was intermittently sanctioned to him till 10.9.87 and later for the period from 12.9.87 onwards. Nonetheless, he was served with a chargesheet dated 18.12.87 for the alleged misconduct of availing of leave in excess of the maximum of 180 days and thereby ceased to be an ED Agent. The applicant was served with a fresh chargesheet dated 23.5.88. An article of additional<sup>&</sup>/charge was included to the effect that he had suppressed the information regarding his break in service while applying on 16.7.87 for admission to recruitment for Group D. He denied the charges and enquiry proceedings were commenced. Subsequently, the applicant was served with the memo dated 16.11.88 removing him from service. A copy of the Enquiry Report dated 24.10.88 was also enclosed but the Enquiry Report was not made available to the applicant before the order of removal was passed against him.

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3. The applicant has argued that the Enquiry Officer found that the Senior Superintendent of RMS had permitted him to take leave without allowance till recovery from illness, that he had never been punished or awarded break in service and that all his leave applications were duly sanctioned by the competent authority and that he was not cautioned against taking leave for long periods. The Enquiry Authority found that the first article of the charge that the applicant had availed leave in excess of 180 days in violation of Rule 5 and Rule 7 and the ED Agents' Rules was only partly proved. As regards the second article of the charge, the Enquiry Authority found that it was not proved. The Disciplinary Authority, however, disagreed with the findings of the Enquiry Officer without giving the applicant an opportunity of being heard. Thus, according to him, the order of punishment is violative of the principles of natural justice and Article 311(2) of the Constitution. The Appellate Authority, according to the applicant, rejected his appeal without affording him an opportunity of being heard. The review petition was also rejected without proper consideration of all the legal and other contentions raised by the applicant. According to the applicant, Rule 5 of the ED Agents (Conduct and Service) Rules 1964 does not provide for automatic removal from service of the ED Agent who remains absent from duty for any period exceeding the

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limit upto which he could have been granted such leave. Accordingly, he has argued that the instructions at Exbt. A-17 providing automatic termination of service of an ED Agent who remains on leave for more than 180 days is unconstitutional and void. The applicant has further argued that cancellation of the disciplinary proceedings by the order dated 6.5.88 at Exbt. A-14 and holding denovo enquiry on the basis of same allegations and facts is not based on any rule and unconstitutional. Since his absence from duty was occasioned by his illness, termination of his service is oppressive and arbitrary.

4. The respondents have stated that the disciplinary proceedings initiated originally by the second respondent i.e. Senior Superintendent, RMS had to be cancelled as he happened to be the Appellate Authority. It was specifically mentioned in the cancellation order that the cancellation was without prejudice to further action in accordance with rules. Such cancellation is permissible vide DG, P&T's letter of 5th July, 1979 at Annexure-R2(A). The second chargesheet issued was not found to be illegal by the Tribunal while dismissing the applicant's application No. K.313/88. The respondents have conceded that the copy of the Enquiry Report was not served before the order of penalty was issued, because the rules did not provide serving of the copy

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before the final order. It has also been conceded that the Disciplinary Authority disagreed with the findings of the Enquiry Officer <sup>without consulting the applicant</sup> but recorded his views while passing the order of punishment. The respondents have further averred that the applicant had been absenting himself from duty on the false plea of ill-health and was actually working as a clerk of an Advocate in Mavelikara during the period of his absence. The applicant did not seek a personal hearing before the Appellate Authority and hence the appellate order cannot be faulted.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We cannot help feeling that the entire disciplinary proceedings against the applicant suffer from a number of fatal infirmities and faults. The disciplinary proceedings initiated in 1987 were cancelled by the order dated 6.5.88 at Exbt. A-4 by a bland order as follows:

"This office memo No. even dated 18/12/87 is ordered to be cancelled without prejudice to further action being taken. Consequently, this office memos No. even dated 7/1/88 and PO are also ordered to be cancelled."

The respondents have supported this order by citing the DG's instructions dated 5th July, 1979 at Annexure-R2(A)

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which reads as follows:

"It is clarified that once the proceedings initiated under Rule 14 of the CCS (CCA) Rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh chargesheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on."

(emphasis added)

Since the order for *denovo* proceedings did not mention any reason whatsoever for cancelling the original charge-sheet and enquiry proceedings, the initiation of *denovo* proceedings by the order of 6.5.88 does not appear to be legally well-founded. The two articles of charge against the applicant were as follows:

"Article 1. That the said Sri K.Ravikumar, while functioning as EDMM, SRO Kayamkulam during the period, from 28.2.81 availed leave of absence in excess of the maximum of 180 days permissible and thereby ceased to be ED agent in terms of Govt. of India Instructions below Rule 5 of Post and Telegraphs EDA (Conduct and Service) Rules, 1964.

Article 2. That the said Sri K.Ravikumar, while functioning as EDMM SRO Kayamkulam submitted an application dt. 15.6.87 for admission to the examination for recruitment of group D wherein he had suppressed the information regarding his break in service."

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6. The Enquiry Officer in his Report dated 24.10.88 found that the second article of charge was not proved. In regard to the first article of charge, the Enquiry Officer gave his finding as follows:

"The following factors are pertinent in this connection:

- (1) The charged EDA had fallen from mail truck on 24.8.84.
- (2) The SSRM in D-2 has permitted the official to take leave without allowances till recovery from illness. This had not been revoked so far.
- (3) The official was never punished for awarded break in service for taking leave, but on the contrary, all his leave applications were duly sanctioned by the SRO from time to time and the charged EDA was not even cautioned about taking leave for long periods.
- (4) The official at present (since 13.11.87) is in a position not envisaged in the rules; i.e. he is neither on duty nor put off duty. But officially he is still EDMM SRO Kayamkulam.
- (5) No evidence has been adduced to disprove the facts.

**FINDING:** I therefore hold that the charge and imputation against Shri K. Ravikumar, EDMM SRO Kayamkulam that he availed leave in excess of 180 days and thus violated rule 5 and rule 17 of EDA (Conduct and Service) Rules 1964 stands **PARTLY PROVED**."

7. To our mind, it appears to us less than fair to the applicant that the Disciplinary Authority should have disagreed with the finding of the Enquiry Officer unilaterally without giving an opportunity to the applicant to advance his defence in support of his defence to substantiate his innocence which had been partially substantiated by the Enquiry Officer. It has been held by the Supreme Court in Narayan Misra Vs. State of Orissa (1969) 3 SLR 657 that if the Enquiry



Officer gives a finding favourable to the delinquent officer but the Disciplinary Authority disagrees with him, the delinquent officer must be given a notice before any finding adverse to the delinquent officer is taken by the Disciplinary Authority contrary to the finding of the Enquiry Officer. We feel that merely giving reasons of disagreement will not suffice without giving an opportunity to the delinquent officer to advance his defence which he had been able to establish before the Enquiry Officer. Undoing the favourable finding of the Enquiry Officer without hearing the delinquent officer is clearly a violation of the principles of natural justice.

8. Further, we feel that Government of India's instructions below Rule 5 of P&T ED Agents (Conduct and Service) Rules, 1964 referred to in the first article of the charge whereby an EDA who remains absent on leave in excess of 180 days automatically ceases to be an ED Agent is not constitutional. It was held by the Supreme Court in L. Robert D'Souza Vs. Executive Engineer, Southern Railway, AIR 1982 SC 854, that absence without leave constitutes misconduct and it is not open to the employer to terminate the service without notice and enquiry or at any rate complying with the minimum principles of natural justice. It is admitted

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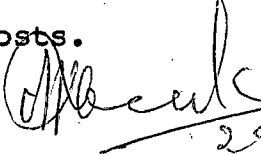
by the respondents that the applicant had met with an accident and he had taken several spells of leave on medical grounds and on certain occasions on personal reasons. The leave sanctioning authority had sanctioned all applications for leave of the applicant and had not taken any disciplinary action against the official. In the circumstances, the question of automatic termination of his service did not arise. Even in cases where an official over-stays one's leave without sanction, the Supreme Court in Jai Shankar Vs. State of Rajasthan, 1966 SC 492 held that a Government cannot order a person to be discharged from service without giving an opportunity of showing cause why he should not be removed. Applying this principle, the Supreme Court set aside provisions in the various rules in Bihar Civil Service Code (AIR 71 SC 1409), FR 18 of Assam Fundamental and the Mysore High Court set aside Subsidiary Rules (AIR 76 SC 37) and Mysore Civil Service Rules (1969) SLR 21, which provided for automatic termination of service on over-stayal of leave, as violative of Article 311 of the Constitution.

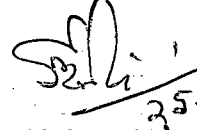
provision in the

9. Accordingly, we declare that the DG, P&T's instructions at Exbt. A-17 to the extent it states that "if an EDA remains on leave for more than 180 days at a stretch, he shall cease to be an EDA", is unconstitutional and void being in violation of Article 311

of the Constitution.

10. In the conspectus of facts and circumstances, we allow this application, set aside the impugned proceedings and orders at Exbt.A-7, A-11. A-12, A-14 and A-16 and also that part of the DG's circular at Exbt.A-17 which states that "if an EDA remains on leave for more than 180 days at a stretch, he shall cease to be an EDA" and direct that the applicant be re-instated as EDA with immediate effect. He will be entitled to such arrears of pay and allowances during the period of his removal from service as are admissible under the <sup>Rules</sup> ~~rules~~. There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM  
R.A.No.94/90  
in O.A. No. 462/89 ~~xxxx~~  
~~xxxxxxx~~

DATE OF DECISION 18.10.90

Chief Post master General Applicant (s)  
Kerala circle and others

Mr.TPM Ibrahim Khan Advocate for the Applicant (s)

Versus

K.Ravikumar Respondent (s)

Mr.OV Radhakrishnan Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. A.V.Haridasan, 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*
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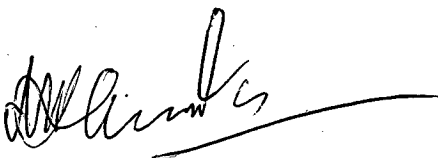
JUDGEMENT


(Hon'ble Mr. S.P.Mukerji, Vice Chairman)

Heard the learned counsel for both the parties on this Review Application. The main ground taken by the Review Applicants is that the instructions dated 24.2.70 and 27.2.70 ~~which~~ were issued to supplement Rule No.5 <sup>which</sup> was later amended on 13.1.72 and therefore the direction of this Tribunal in its judgment dated 25.6.90 in O.A. 462/89 that the clause regarding an E.D.A. ceasing to be an E.D.A. if he remains on leave for more than 180 days <sup>was</sup> ~~is~~ infructuous. The other ground taken by the Review Applicants is that the huge amount of backwages and consequential benefits to be given to the applicant will ~~be~~ adversely affect the State exchequer.

2. So far as the first ground taken is concerned in our aforesaid judgment we had set aside the offending clause which figures in Annexure-A.17 which includes the instructions dated 18.8.73 <sup>issued</sup> after the said amendment of Rule 5 had been given effect to. Accordingly the first ground taken is not warranted.

3. As regards the second ground, our judgment does not give any direction regarding payment of full pay and allowances during the period of removal from service per se but states that the <sup>applicant</sup> will be entitled to such arrears as are admissible under the law. The respondents cannot get away from the obligation <sup>under the</sup> law on the plea of its effect on the State Exchequer. In any case, we do not find any merit in the Review Application and dismiss the same.

  
(A.V. Haridasan)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman

18.10.90

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