

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATED FRIDAY, THE TWENTY EIGHTH DAY OF JULY ONE  
THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN(A)

&

HON'BLE SHRI G.SREEDHARAN NAIR, VICE CHAIRMAN(J)

ORIGINAL APPLICATION NO.466/86

N.R.Jayachandran - Applicant

V.

1. Union of India, represented by  
the Secretary, Ministry of  
Communications, New Delhi.

2. The Post Master General,  
Kerala Circle, Trivandrum.

3. The Divisional Engineer,  
Telegraphs, Trivandrum. - Respondents

M/s M.K.Damodaran, P.V.Mohanan, - Counsel of the  
V.K.Mohanan & Jonny Sebastian applicant

Mr K.Narayanakurup, ACGSC - Counsel of the  
respondents

O\_R\_D\_E\_R

(G.SREEDHARAN NAIR, VICE CHAIRMAN)

The applicant while working as Telephone Operator  
at Trivandrum entered on leave from 15.6.1982 by applying  
for eligible leave for 10 days at the outset. Again he  
applied for half pay leave from 25.6.1982 for 86 days  
and thereafter, for extra ordinary leave for one year,  
which was <sup>Sought</sup> ~~said~~ to be continued till 26.9.1985. It is  
alleged that during this period, he was outside the  
State of Kerala in connection with medical treatment,

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*[Handwritten signature]*

believing that the department would have granted the leave. According to him, he reported for duty on 26.6.1985 when he came to know that he has been removed from service with effect from 9.9.1983. Since his request for reinstatement in service has not been allowed, he has filed the present application.

2. It is alleged that in accordance with the rules, he is entitled to the leave and that the termination of his service is illegal. It is stressed that even the order of termination of service has not been served on him.

3. The applicant prays for a declaration that he be deemed to have been in continuous service and to direct the respondents to reinstate him in service with consequential benefits.

4. In the reply filed on behalf of the respondents, it is contended that the order of termination of service has been passed consequent upon an enquiry under Rule 14 of CCS(CCA) Rules 1965 and as such the application is not maintainable since the applicant has neither appealed nor submitted a review petition in accordance with rules. It is stated that regarding the application for leave submitted by the applicant, as the leave sanctioning authority was not satisfied with the ground mentioned

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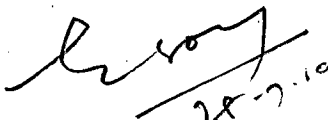
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therein a registered notice was issued to the applicant, directing him to report for duty, but it was returned undelivered with the postal remark "Left India". According to the respondents, since the applicant did not report for duty, the disciplinary proceedings were initiated, but the charge sheet was returned undelivered. As such the enquiry was proceeded with ex-parte and the penalty of removal from service was imposed and the joining report of the applicant was not accepted. The respondents <sup>have</sup> relied on Sub rule (2) of Rule 25 of the CCS Leave Rules rendering a government servant liable to disciplinary action for wilful absence from duty after the expiry of the leave.

5. The declaration prayed for by the applicant that he is to be deemed as having been in continuous service, cannot be allowed in the face of the order in the disciplinary proceedings by which the penalty of removal from service ~~was~~ <sup>is</sup> imposed on the applicant. Evidently, the applicant was not in station when the enquiry was conducted, and as such the respondents cannot be faulted for conducting <sup>the</sup> enquiry ex-parte. Even then, now that the applicant has offered himself for duty, we are of the view that the interests of justice require that a chance is to be afforded to the applicant to challenge the order in the disciplinary proceedings by preferring an appeal

before the appellate authority. We are conscious that the statutory period for preferring an appeal has expired. As such, we hereby direct the respondents to consider the appeal, if any, that is preferred by the applicant against the order imposing the penalty of removal from service, irrespective of the period of limitation, in case the appeal is presented within a period of one month from the date of receipt of this order. If the appeal is preferred as above, the respondents shall consider the same in accordance with law and dispose it of within a period of two months from the date of receipt of the same.

6. The application is disposed of above.

  
(G.SREEDHARAN NAIR)  
VICE CHAIRMAN(J)

  
(S.P.MUKERJI)  
VICE CHAIRMAN(A)

28-7-1989

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