

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 476 1990  
T.A. No.

DATE OF DECISION 27.3.91

K. N. Somesekharan \_\_\_\_\_ Applicant (s)

Mr. M R Rajendran Nair \_\_\_\_\_ Advocate for the Applicant (s)

Versus

The Sub Divisional Officer, Telegraphs, Thodupuzha \_\_\_\_\_ Respondent (s)

Mr. P. Sankarankutty Nair. \_\_\_\_\_ Advocate for the Respondent (s)  
ACGSC

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

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure-I order passed in pursuance of the direction in O.A. 336/88 when he approached this Tribunal challenging the disciplinary proceedings and consequential punishment imposed against him.

2. In the earlier case, the judgment of which is produced as Annexure A-II, we directed reinstatement of the applicant in service w.e.f. the date on which his services were terminated by Annexure-IV order referred to in that judgment. But with regard to the salary for the period during which he was out of service, we directed the applicant to file representation producing evidence to establish that he was not gainfully engaged elsewhere during the period when he was out of service.

3. After the judgment he filed Annexure-III representation dated 11.4.90 pursuant to our direction in the judgment. It was disposed by the impugned order Annexure-I dated 28.5.90.

4. The complaint of the applicant is that the direction in the judgment has not been complied with. No enquiry has been conducted and that there is no disposal of the representation Annexure-III in accordance with law. According to the applicant he is entitled to full back wages since he has not been gainfully engaged elsewhere during the period when he was out of service.

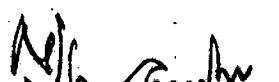
5. We have heard the counsel on both sides and perused the records. It is seen that the Sub Divisional Officer (Telecom), Thodupuzha has passed Annexure-I order after conducting enquiry and find<sup>ing</sup> that he has started a tea shop at Munnar after taking IRDP loan. But he has not come to the conclusion after the enquiry that the applicant was gainfully engaged otherwise in a profitable manner for denying backwages at least to a limited per centage after deducting the income earned from the business during the period in accordance with the provisions of the law. ✓

6. The learned counsel for the applicant referred to us FR 54 which applies/and stated that the Sub Divisional Officer (Telegraphs) Thodupuzha who passed Annexure A-IV order ought to have considered the application under FR 54 and come to a definite finding as to the quantum of amount payable to him during the period when he was out of service because xx the direction to him was xxxxx~~xxxxxx~~ that the matter should be enquired into and disposed of the same in accordance with law.

7. Having considered the matter we are of the view that there is no proper disposal of the matter by the Sub Divisional Officer, Thodupuzha in accordance with law.

Accordingly, we set aside Annexure-I order and remand the matter to the Sub Divisional Officer, Thodupuzha for a proper disposal of the claim of the applicant for back wages during the period between 2.9.1980 and 27.7.1987 in accordance with law applicable in the case. This shall be done by the respondents as expeditiously as possible but not later than three months from the date of receipt of a copy of this order.

8. The application is allowed. There will be no order as to costs.

  
(N. DHARMADAN)  
JUDICIAL MEMBER

27.3.91

  
(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

KMN

(19)

NVK & ND

Mr MR Rajendran Nair for applicant.  
Mr P Sankarankutty Nair, ACGSC by Mr. Madhusoodhanan.

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At the request of counsel, call on 28.10.91.

*Ph*

*b/r*

16.9.91

(40)

NVK & ND

Mr MR Rajendran Nair for the applicant  
None for respondents.

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Respondents have filed a statement. Applicant  
seeks time. Call on 19.11.91.

*Reply by respondents*  
*filed on 28.9.91*

*b/r*

28.10.91

NVK & ND

(16)

Mr MR Rajendran Nair by Asst for applicant.  
Mr P.S.K. Nair, Asst. for Respondent by Prose.

At the request on behalf of the  
learned Counsel for the respondents, call  
on 3-12-91.

*b/r*

(2)

NVK & ND

13-11-91

Mr MR Nair for applicant.  
Mr P.S.K. Nair for respondent.

We have heard the parties. We are  
not satisfied <sup>with</sup> that the reply now filed by the  
respondents. We would like the respondents  
to ~~state~~ as to why resort of deemed suspension  
was not taken at the earlier stage itself and  
why the directions in Annexure-I orders have  
not been complied with. We are also

informed that even <sup>when</sup> the applicant is treated to be under deemed suspension, he has not been given subsistence allowance which ought to have been given ~~the~~ the salary for the period prior to reinstatement. Call on 2.1.92 for further direction.

Copy of the order be given to learned Counsel for respondent.

b/v  
3/12/91

NVK and

Sr. M. R. Raymudran Nain

Sr. N. N. Suganapalam

On behalf of the respondents, a statement has been filed by the respondent and I submit that there was no objection from the department to grant the subsistence allowance as it is indicated in the order itself. The learned Counsel for the applicant submits that necessary non-employment Certificate as required under the Rules ~~before~~ have has already been produced before the Competent authority. The learned Counsel for the respondents submit that subsistence allowance will be paid to the applicant will in 7 days from today or from the date of receipt of the certificate.

10. issued on 5/12/91  
Re 4/12/91  
ms plie  
Statement by  
Respondents  
or 11/12/91  
or

(3)

13:

of non-employment which was in  
later

Call on 30.1.92

2-1-92

NVK&MD

(19)

Mr MDA Nar

Mr ASK Nar by Proxy

The learned Counsel for respondent  
submitted that in terms of the earlier  
order, the amount of subsistence allowance  
due has already been paid on 8.1.92.

The applicant sets some time for verification.

Call on 13.2.92.

10.1.92

30.1.92

NVK & MD

(6)

Mr MDA Nar by Proxy:

Mr ASK Nar by Proxy:

At the request of the learned Counsel for  
the applicant, Call on 27/2/92

13/2/92

NVK & ND

Mr. M. R. Rajendran Nair  
Mr. P.S.K. Nair, ACGSC by proxy

We have heard arguments of the parties. One of the prayers made by the petitioner in the CCP that orders of suspension, etc. should be quashed, may not be possible and that for that purpose he ~~had~~ ought to file a separate application. He is given three weeks time to file such an application.

Respondents are also at liberty to supplement the reply they have already filed to the CCP.

~~List for final hearing on 18.3.92.~~

*Mr. G. Nair*  
ND  
27.2.92

*R*  
NVK  
27.2.92

NVK & ND

(11) Mr MRR Nair  
Mr PSK Nair, ACGSC

At the request of the learned counsel for the applicant, call on 3.4.92.

*ND*  
NO

*R*  
NVK

18.3.92

NVK & ND

(12) Mr MR Rajendran Nair  
Mr PSK Nair, ACGSC

Let the CCP be listed alongwith DA 426/92 on 1.5.92.

*b*  
ND

*V*  
NVK

3.4.92

NVK & ND

Shri M.R. Rajendran Nair for applicant  
Mr. P. Sankaran Kutty Nair, ACGSC

Today we have heard and disposed of OA 426/92  
filed by the applicant in CCP 55/91 in OA 476/90.  
In view of the judgment in OA 426/92 CCP ~~and the~~  
~~parties~~ ~~are~~ ~~in~~ ~~mutual~~ ~~disagreement~~ ~~and~~ ~~there~~ ~~is~~ ~~no~~ ~~case~~ ~~for~~ ~~rehearing~~  
Hence it is closed.

*S. B.*  
1.5.92

NVK & ND

*this*  
The applicant has filed CCP 55/91 in OA 476/90. Separately, he has also filed OA 426/92 challenging the final order dated 2.9.91 passed by the respondents in purported compliance of our final orders in OA 476/90.

2. We have, today, passed orders separately in OA 426/92 and allowed that application with certain directions to the respondents.

3. In the circumstances, we are satisfied that there ~~has~~ has been no contempt of our orders in OA 476/90 and therefore, there is no need to pursue this CCP any further and hence, it is closed.

*AK*

*Chu*

ND

NVK

1.5.92

*Received today  
Pr  
26/6/92*  
*m. KRM*  
*order communicated  
on 26/6/92*  
*BB*