

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 478/90
KXX No.

198
DATE OF DECISION 30.4.91

Prema Jose and 2 others Applicant (s)

M/s N.Sukumaran, S.Shyam and Advocate for the Applicant (s)
V.K.Balakrishnan

Versus

Union of India, represented by the Secretary Respondent (s)
Ministry of Communications, New Delhi and 2 others

Mr.T.P.M.Ibrahim Khan (for R1 to 3) 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?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

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

The applicants in this application before us are the widow, daughter and son of Late Shri Joseph Mathew, a deceased Lower Division Clerk who had worked under the Post Master General, Kerala Circle. They have prayed that the impugned orders at Annexure -2 dated 8th January, 87 removing Shri Mathew from service, the appellate order dated 10th May 1988 at Annexure -4 reducing the punishment of removal to that of reduction in rank as Sorter and the further order dated 5th May, 1989(Annexure -7) cancelling the appellate order dated 10.5.88 and restoring the original punishment order of removal dated 8.1.87, be set aside and Shri Mathew declared to have been continuing in service as L.D.C till his death on 15.5.1990 and that the respondents directed to pay to the applicants all arrears of salary, gratuity, medical reimbursement and other benefits due to Late Shri Mathew. Their further prayer is that respondents be directed to treat the military service of Shri

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Mathew as pensionable service under the Postal Department and to grant family pension and other benefits to the applicants. The material facts of the case are as follows.

2. Late Shri Joseph Mathew was in the Defence Services from 3.6.61 to 16.9.1970. He was in the battle front during the 1965 Indo-Pakistan War and sustained serious injuries and boarded out from the Armed Services with disability pension. He was re-employed as Sorter in the Postal Department on 29.7.1971 under the scheme of rehabilitation of ex-servicemen. He was promoted as L.D.C on 14.5.1975. According to the applicant, apart from the knee injury which had not been fully overcome, he became a heart patient in 1980. He had some other family problems also. For these reasons he remained absent during certain periods between 24.10.82 and 12.10.83 without applying for leave, but later applied for Extra Ordinary Leave for such periods of absence. The Accounts Officer(Administration) chargesheeted him on 30.4.85 but Shri Mathew could not submit his explanation on account of his illness and mental disorder. The Enquiry Officer proceeded ex-parte and entered his finding of guilt of absence without leave or permission. The disciplinary authority accepting the finding of the Enquiry Officer passed the impugned order at Annexure-2 removing him from service. Shri Mathew appealed against that order as at Annexure-3 and the appellate authority, i.e., the Post Master General passed the impugned order at Annexure-4 reducing the penalty of removal to reduction in rank as Sorter in the lower scale. In the same order the appellate authority directed that "the period from removal to reinstatement shall not be duty for any purpose". So far, the proceedings were taking the normal course. Thereafter, however, the proceedings took a peculiar turn. According to the respondents even though the appellate order dated 10.5.88 was received by Shri Mathew, he did not join duty as Sorter in spite of communications dated 16.5.88, 23.6.88 and 19.10.88. Instead of joining, Late Shri Mathew on 25.10.88 asked for time upto 5.1.89 to join duty, on medical grounds. When he did not join duty after 5.1.89 he was given an ultimatum by a memo dated 1.3.89 to join duty within 15 days. A further extension of seven days was given by the appellate authority on 4.4.89 to which Late Shri Mathew sent a medical certificate dated 10.4.89 certifying that the official was unfit for duty for six months from 10.4.89. On this, the appellate authority passed

the third impugned order dated 5th May, 1989(Annexure-7) cancelling his own order dated 10.5.88 and restoring the original punishment order of removal passed by the disciplinary authority. Late Shri Mathew prepared an application to move the Tribunal and signed the same on 8.5.90 and the Vakalath was also executed on the same day. The learned counsel for the deceased employee filed the application before the Tribunal on 21.5.90. As soon as the Tribunal reopened after vacation the same was registered as O.A 389/90. In the meanwhile Shri Joseph Mathew passed away on 15.5.1990. Accordingly the O.A 389/90 was dismissed with liberty to the applicants to file a fresh application as his legal representatives.

3. The applicants have argued that the Accounts Officer being not the appointing authority of Shri Mathew was incompetent to initiate disciplinary proceedings and therefore, all proceedings subsequent thereto are liable to be quashed. Their further argument is that no notice was given to Late Shri Mathew to show-cause why ^{the} penalty of removal should not be awarded to him. They have also challenged the observations made by the appellate authority at Annexure-4 that the deceased did not possess the qualifying service for a pension by arguing that his military service cannot be ignored. They have also challenged the legality of the order at Annexure-7 cancelling the order at Annexure-4.

4. In the counter affidavit the respondents have challenged the averment that Shri Mathew was a heart patient in 1980 as he never applied for leave for any heart ailment between 1980 and 1982. They have also denied that he was mentally imbalanced but have conceded that he had been treated in a Mental Health Centre during 1985. They have cited instances wherein having remained absent the Late Shri Mathew applied for leave subsequently on grounds of illness without medical certificate. They have conceded that the enquiry had been conducted ex-parte as Shri Mathew neither submitted any defence nor participated in the enquiry. After the appellate order was passed on 10.5.88, Shri Mathew did not join duty in the lower post of Sorter despite several warnings and extensions given to him. They have further stated that the Accounts Officer(Administration) is the present appointing and disciplinary authority for L.D.Cs, but have conceded that when Shri Joseph Mathew

was appointed the appointing authority was Deputy Director and the Accounts Officer was disciplinary authority for imposing penalties at serial (i) to (iv) of Rule 11 of CCS(CCA)Rules . They have clarified that under Rule 14(21) (a) of CCS(CCA) Rules, where a disciplinary authority competent to impose the aforesaid penalties but not competent to impose major penalties, is of the opinion that a major penalty should be imposed, he can forward the records of enquiry to such disciplinary authority as is competent to impose the major penalties. They have also clarified that under Rule 15(4) of CCS(CCA) Rules a notice on quantum of penalty need not be given. According to the respondents since Late Shri Mathew did not exercise his option to get his military service counted for pension within one month of the date of his initial confirmation as Sorter on 1.10.74, his military service cannot be counted for pension. They have argued that the appellate order at Annexure-4 had to be treated as cancelled as it became inoperative when the late official did not respond to it for about ⁶ year . He also did not represent against Annexure-7 order.

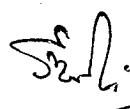
5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We have no hesitation in observing that the order dated 5th May, 1989 at Annexure-7 passed by the Post Master General, cancelling the appellate order dated 10th May, 1988 passed by another Post Master General of the same level and restoring the original order of removal, is illegal through and through. This is because the Post Master General has no power to review an order passed by another Post Master General even as his successor. The appellate order is a quasi-judicial order reducing the quantum of punishment and it cannot be reviewed by the same authority to the detriment of the delinquent officer without giving him a show-cause notice. This is ordained by the elementary principles of natural justice.

6. So far as the appellate order at Annexure-4 is concerned, it is a speaking order and cannot be faulted except to the extent it made a passing reference to the deceased employee not possessing the qualifying service for a pension which is not relevant to the issues before the appellate authority. The further observation made in the last sentence of the appellate order at Annexure-4 "that the period from removal to reinstatement shall not be duty

for any purpose" without giving a notice to the deceased employee, is also violative of the principle of natural justice and has to be struck down. Since the impugned punishment order at Annexure-2 had already been modified by the appellate order at Annexure-4, we need not go into the merits of that order.

7. In the conspectus of facts and circumstances we allow this application in part to the extent of setting aside the impugned order dated 5th May, 1989 at Annexure-7 and restoring in part the appellate order dated 10th May, 1988 at Annexure-4. The observations made in the appellate order dated 10th May, 1988(Annexure A-4) that the appellant "does not possess the qualifying service for a pension" and that "the period from removal to reinstatement shall not be duty for any purpose" are also set aside. We also declare that the deceased employee Shri Mathew shall be deemed to have been reinstated as Sorter with effect from the date of his removal, i.e., 8.1.87 and the period from the date of removal to 15.5.89 when he expired shall count for service for pension and other retiral benefits. During this period his legal representatives will be entitled to claim such leave salary to which the deceased was entitled on the basis of his earned leave and half pay leave on medical grounds. The applicants' entitlement to family pension and other benefits due to the deceased should be reckoned on the basis of this order and disbursed to the applicants in accordance with law within a period of three months from the date of communication of this order. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


30.4.91
(S.P. Mukerji)
Vice Chairman