

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A NO. 496/2004

THURSDAY THE 25th DAY OF January, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

Balachandran Nair
Branch Post Master
Thoval House
Mylatty PO
Udima, Kasaragod.

Applicant

By Advocate Mr. K. Rajeevan

Vs.

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

2 Postmaster General
Northern Region
Kerala Circle
Kozhikode.

3 Superintendent of Post Offices
Kasaragod Division
Kasaragode.

Respondents.

By Advocate Mr Thomas Mathew Nellimoottil

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant has assailed the order of the third respondent dated 18.3.1996 imposing a penalty of dismissal from service on him and the Annexure A-5 order confirming the same by the Appellate authority.

2 The applicant was appointed as Branch Postmaster, Mylatti Branch Post Office in the Kasaragod Postal Division w.e.f. 5.5.1987. While working in the said post he was sanctioned leave without allowance for three months w.e.f. 1.8.1994. According to the applicant he was suffering from mental ailment and hence could not rejoin duty on 1.11.1994 after the expiry of the leave. On regaining his health he approached the Sub Divisional Inspector who informed him that his services were terminated. He preferred a representation for reinstatement to the Superintendent of Post Offices on 13.2.2003 (Annexure A1). Through the reply furnished by the Superintendent of Post Offices he was informed that he had been removed from service by memo dated 18.3.1996 (Annexure A-3). The applicant then preferred a petition under Rule 19 of the Department of Posts Gramin Dak Sevak (Control and Employment) Rules, 2001 but the petition was also dismissed by Annexure A-5 order.

3 The applicant has submitted that the departmental enquiry conducted against him was an ex parte enquiry and neither the chargesheet nor the order imposing the penalty have been served on him and this position is against Rule 10(1)(a) of the Department of Posts GDS (Conduct & Employment) Rules as well as Rule 14 (20) of the CCS CCA Rules, 1965. The ex parte enquiry cannot proceed when the charge sheet was not delivered to the delinquent and the applicant did not have the opportunity to controvert the contents of the chargesheet. If it was not possible to deliver the same rules direct that it should have been published in the newspapers. The

applicant has also challenged the impugned order on the ground that the period indicated by the disciplinary authority as unauthorised absence in the chargesheet is not correct as the applicant was on leave from 1.8.1994 to 31.10.1994 and notified on 30.11.1994. In short the applicant's prayer is that the Departmental proceedings are liable to be quashed on the ground that the rules of natural justice have not been followed as the entire proceedings were conducted behind the back of the applicant.

4 Per contra, the respondents have submitted that the applicant was granted leave by Annexure R-2 and R-3 orders from 30.9.1994 to 30.11.1994 for 62 days. Hence he was absent from duty unauthorisedly w.e.f. 1.12.1994 and the dates indicated in the order of the 3rd respondent are correct. Leave beyond sixty days upto 180 days is being sanctioned with the approval of Supdt. Of Post Offices and the Supdt. Of Post Offices is the disciplinary authority in respect of the applicant and there was nothing wrong in the Supdt. Of Post Offices as the Disciplinary authority in the case as he was not a material witness in the enquiry and the leave applications have to be submitted by the EDAs to the Sub Divisional Inspector who in turn forward the applications to the Supdt. Of Post Offices for approval. No application for leave was received from the applicant by the SDI from 1.12.1994 onwards. The Chargesheet was issued to the applicant and despatched to him in his last known address which was returned undelivered with the remark "addressee left India, returned to the sender." There are no departmental instructions to

publish the notice in the news papers Rule 8 of the P&T ED Agents (Conduct and Service Rules 1964) states that "the employee should be informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken." In this case the chargesheet had been issued and despatched to the applicant by registered post. Similarly copy of the enquiry report was forwarded to the applicant as per letter No. B-3/273 dated 26.2.1996 and that letter was also received with the endorsement "the addressee left India, returned to the sender" (R-5). Final orders were then issued on 18.3.1996. Hence all procedural formalities were followed before taking the final decision. After six years of the order of dismissal, he has contended that he was under treatment for a mental ailment about which he has not informed the department earlier and such a statement cannot be accepted as true at this late stage.

5 In his rejoinder the applicant has contended that he was under treatment for his mental ailment from 1.8.94 to 1.2.2003 and enclosed Annexure A-6 medical certificate showing that he was under treatment during this period and that the same would confirm that he was in India only and also filed an affidavit to that effect.

6 In the additional reply statement to the rejoinder, the respondents have pointed out that the Annexure A-6 medical certificate now produced by the applicant does not bear any date and has been produced after a gap of seven years and this certificate cannot be a proof that the applicant was in India during the relevant period. If the argument of the applicant about his illness is

correct, he should have applied for leave on medical ground supported by medical certificates issued by the competent medical authorities at the appropriate time. He has also not made any arrangement for updating his contact address or for redirecting his mail. The fact was not informed by him to any of the delivery staff of the post office nor has any member of his family kept the department informed about his illness.

7 We have heard Ms. Nazeeba for the applicant and Shri Varghese John for the respondents. The crux of the argument of the applicant's side was that he was a victim of an ex parte enquiry conducted behind his back and the respondents have not followed the relevant rules for conduct of the disciplinary proceedings and the reason for the prolonged absence is the treatment being taken for mental depression.

8 We have perused the records. It shows that the charges were framed by the memo dated 8.6.1995, enquiry officer was appointed on 26.6.1995, the enquiry commenced on 17.11.1995 and was completed on 28.12.1995. The charge memorandum was sent by registered post wide HO RL NO. 1445 dated 12.6.1995 to the last informed address of the applicant which we find on verification as the same as the address given by the applicant in the O.A. This registered letter was received back with the remark that "the addressee left India, returned to sender". Copy of the enquiry report was again sent by registered post with AD NO. RL 1929 dated 22.6.1996 which was also returned with the same remark. There

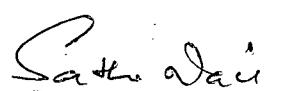
was just no option for the enquiry officer but to proceed with the enquiry ex parte and for the disciplinary authority to impose the punishment proposed on the basis of the enquiry report. Rule 8 of the ED Agents (Conduct and Service) Rules 1964 relied upon by the applicant as well as identical rule in the CCS (CCA) Rules stipulate that the employee should be informed in writing of the proposal to take action against him and the basis on which it is proposed to take action. The respondents by sending chargesheet and the enquiry report by way of registered post to the applicant to his last known address have complied with this provision of the rule. It is not as if there was a deliberate effort to bypass these rules and when letters are returned to the sender with the remark that "addressee left India, returned to sender" the authorities cannot be expected to wait indefinitely and postpone the enquiry. If the applicant was not available to receive the communication it is his responsibility to have not made an alternative arrangement to keep the office informed about his whereabouts. If he was in India for treatment as claimed, there is no reason why he could not inform the same to the department or at least his family or friends or relatives should have done so if he was indeed not mentally sound as made out. The medical certificate now produced by him does not provide any credible evidence, as pointed out by the respondents, it is undated and has been given for the entire period of his absence and clearly appears to be the result of an afterthought. According to the submission of the applicant he had engaged a substitute during his

leave period and this person is also seem to have been authorised only for the periods upto 30.11.1994, as per documents at Annexures R-1 to R-3. Therefore it is very evident that after 30.11.1994 the applicant never applied for extension of the leave or appointed a substitute nor submitted leave applications with medical certificate requesting for medical leave nor was he heard of for a long period of 7 years upto 2003 when he submitted a representation seeking re-entry in the service. Even then the respondents sent a copy of the penalty order dismissing him from service and also entertained an appeal which has been disposed of by a speaking order Annexure A-5 by the Appellate authority dated 19.12.2003 wherein all the contentions he has raised in this OA have been duly examined and holding that the authorities have followed due proceedings in a just and proper manner and confirming the dismissal from service. We find no justifiable reason to interfere with this oder. The Application is devoid of any merit, it is dismissed.

Dated 25.1.2007.



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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