

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 502 of 2002

Tuesday, this the 20th day of July, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. K.E. Vavichi,
S/o K.A. Ibrahim Saheb,
Group D, Palakkad HPO,
residing at Randood Kadamb,
Koranchira PO,
Palakkad - 678 684Applicant

[By Advocate Shri M.R. Hariraj]

Versus

1. Director of Postal Services,
Northern Region, Calicut - 673 011
2. Post Master General,
Northern Region, Calicut.
3. Senior Superintendent of Post Offices,
Palakkad Division - 678 001
4. Union of India, represented by the
Secretary, Department of Posts,
Ministry of Communications, New Delhi. Respondents

[By Advocate Shri M. Rajendrakumar, ACGSC]

The application having been heard on 20-7-2004, the Tribunal on the same day delivered the following:-

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

This litigation has a long and chequered career.

2. The applicant, K.E.Vavichi, while working as EDBPM Koranchira, was put off duty under Rule 9(1) of the Post & Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 with effect from 24-6-1987 in contemplation of the departmental proceedings for the alleged misconduct of unauthorized absence and for engaging unapproved outsider on

the post violating Director General's instructions under Rule 5 of ED Agents (Conduct and Service) Rules. On culmination of the departmental disciplinary proceedings the applicant was removed from service, by order dated 3-11-1987 of the 3rd respondent. The applicant challenged the order in OA.No.650/90 which was allowed by judgement dated 28-2-1991 setting aside the impugned order and holding that the applicant would be deemed to be continuing on put off duty till culmination of the disciplinary proceedings, which the respondents could hold denovo from the stage of charge sheet but was to be completed within a period of four months from the date of receipt of a copy of the order. Since the respondents could not hold and complete the denovo enquiry within the time stipulated in the order in OA.No.650/90, they filed MA.No.1230/91 seeking extension of time, which was disposed of directing the respondents to reinstate the applicant in service forthwith with full allowances. Pursuant to the above order, the applicant was reinstated in service on 15-1-1992 and he joined duty on 21-1-1992. The applicant was paid allowances from 15-11-1991. Thereafter, the respondents held denovo enquiry, which resulted in an order dated 10-8-1993 holding the applicant guilty and debarring the applicant from appearing for any examination for promotion of EDAs for a period of 3 years. The appeal being unsuccessful, the applicant carried the matter before the revisional authority. The revisional authority by order dated 5-5-1995 set aside the order of the appellate authority and ordered a denovo proceedings from the stage of charge sheet. Thereafter, another denovo proceedings was held, which resulted in an order of penalty of debarring promotion for a period of 3 years. The applicant filed an appeal, which was disposed of by the appellate authority by order dated 4-5-1999 modifying the penalty to one of debarring him from appearing in recruitment examination for the post of Postman

(Signature)

and from being considered for recruitment as PA/SA for a period of 2 years. The applicant aggrieved by that filed a revision petition. The revisional authority by order dated 29-9-2000 (Annexure A3) not only concurred with the appellate authority's finding that Article-I of the charges has not been established, but also held that Article-II not be sustained. As a result, the revisional authority quashed the order of the appellate authority and set aside the penalty imposed on the applicant. Thereafter, the applicant submitted a representation to the 3rd respondent seeking backwages for the period of put off duty. In reply to the above representation, he was served with Annexure A4 order dated 22-6-2001 telling him that as there was no direction in the revisional authority's order regarding the treatment of period from 24-6-1987 to 14-11-1991 and there was an observation that the revisional authority would have ordered a denovo enquiry and did not do so because of a lapse of 13 years, the applicant has not been fully exonerated on merits and therefore, he was not entitled to the backwages for the period of put off duty. Aggrieved by that, the applicant submitted another representation dated 11-7-2001 (Annexure A5) to the 1st respondent. In reply to the said representation, the 1st respondent issued the impugned order Annexure A1 dated 27-2-2002 turning down the claim of the applicant virtually on the same ground that there had been an observation in the revisional authority's order that a denovo enquiry would have been ordered but for the lapse of 13 years and therefore the applicant was not fully exonerated. Aggrieved by that the applicant has filed this application seeking to set aside Annexure A1 and A4 orders, for a declaration that the applicant is entitled to get backwages for the period from 24-6-1987 to 14-11-1991 during which he was kept out of service and for a

direction to the respondents to pay full allowances for the period from 24-6-1987 to 14-11-1991 and to count the period between 24-6-1987 and 20-1-1992 for all service benefits.

3. Respondents have filed a reply statement.

4. We have gone through the pleadings and materials placed on record and have heard Shri M.R.Hariraj, learned counsel of the applicant and Shri M.Rajendrakumar, ACGSC for the respondents.

5. That the applicant was put off duty with effect from 24-6-1987 in contemplation of a disciplinary proceedings for the alleged unauthorized absence and engaging unapproved outsider violating Director General's instructions is not in dispute. Eventhough twice denovo enquiry has been held, ultimately by Annexure A3 order of the revisional authority it has been held that the applicant was not guilty. The revisional authority has in its order Annexure A3 gone into the merits of the entire proceedings and has held that Article-II of the charges, which was held to have established by the appellate authority, would not be sustained and therefore set aside the appellate order as also the penalty. Once the applicant has been held not guilty of both the articles of charges by the highest authority, viz. the revisional authority, there is no reason to contend that the exoneration is not on merits. The revisional authority has, in the penultimate paragraph in its order Annexure A3, held that Article-II of the charges could not be sustained. However, the authority concluded its order with the following paragraph:-

"Though otherwise I would have ordered a de-novo enquiry in this case I note that the proceedings herein had their inauguration some 13 years ago in pursuance of the SSP's Memo No: B3/162(a) dated 6.10.87 and the

case has been defying a conclusion for quite long now. The present enquiry itself was the off shoot of a denovo charge sheet. Having regard to the facts and circumstances of the case, I think that it is hightime to call a halt to the whole exercise sooner than later. Accordingly I hereby quash the order of the appellate authority and set aside the penalty imposed on the petitioner."

6. Merely taking advantage of a statement in the revisional authority's order that though otherwise she would have ordered a denovo enquiry she was not doing so on account of the lapse of 13 years, it cannot be held that the applicant was not exonerated in full. Once the highest authority has held that the articles of charges 1 and 2 have not been established, it amounts to a complete exoneration. Therefore, the reason stated in Annexure A1 and A4 orders for denying the applicant the benefit of service during the period he was put off duty is unsustainable.

7. There is a contention by the respondents that there is no order specifically by the revisional authority regarding treatment of the period of put off duty and put off duty not being a penalty, the revisional order does not entitle the applicant to claim backwages for the period of put off duty. We find no substance in the argument because once the revisional authority has ultimately found that the misconduct against the applicant has not been established, the period of put off duty for the purpose of holding the disciplinary proceedings against the applicant will have to be treated as duty for all purposes. But for the put off duty the applicant would have continued in service and earned his allowances.

8. In the light of what is stated above, we allow the Original Application, set aside the impugned Annexure A1 and A4 orders and direct the respondents to pay to the applicant full backwages for the period between 24-6-1987 and 14-11-1991 and



to treat the period from 24-6-1987 to 20-1-1992 as service for all service benefits. The above direction shall be complied with by making payment to the applicant within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Tuesday, this the 20th day of July, 2004



H.P. DAS

ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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