

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 583 of 2010

Tuesday, this the 25th day of October, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

M.J. Sebastian,
S/o. Yohannan,
Floor Assistant,
Doordarshan Kendra, Calicut,
Residing at Aswathy House,
Trikkakara ... Applicant.

(By Advocate Mr. P.V. Mohanan)

v e r s u s

1. Director General,
Doordarshan Directorate,
(Prasar Bharathy Doordarshan),
Mandi House, New Delhi : 110 001
2. The Director,
Doordarshan Kendra
(Prasar Bharathy),
Thiruvananthapuram,
3. K.V. Padmanabhan,
Assistant Station Engineer,
Doordarshan Kendra, Kozhikode.
4. The Deputy Director,
Doordarshan, Koshikode. ... Respondents.

(By Advocate Mr. N.N. Sugunapalan (Sr.) with Mr. Sujin for R1,2 & 4
and Mr. S. Sujin for R-3)

This application having been heard on 12.10.2011, the Tribunal on
25-10-11 delivered the following:



ORDER**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicant in this O.A commenced service as Floor Assistant on 10.10.1985 at Doordarshan Kendra, Trivandrum. He was transferred to Port Blair in the year 2002 and then to Doordarshan Kendra, Kozhikode on 25.08.2005. The Doordarshan Kendra, Kozhikode is a newly set up station. The 3rd respondent (Assistant Station Engineer) was given the charge of Head of Office. According to the applicant, he was not permitted to sign in the attendance register in the year 2008 and 2009 by the 3rd respondent. By memo dated 07.01.2010, he was directed to submit leave application for unauthorised absence for a period of 379 days. Meanwhile, on his request, he was transferred to Port Blair vide order dated 02.02.2010 at Annexure A-5. Vide Annexure A-10 order dated 25.06.2010, he was relieved by the 3rd respondent. If the applicant is relieved without regulating the period of alleged unauthorised absence, he will be prejudiced. Further, vide Annexure A-11 order dated 23.06.2010, dies non was imposed on the applicant for 379 days. Aggrieved, the applicant has filed this O.A. praying for setting aside the orders at Annexures A-10 and A-11. During the pendency of the O.A., the applicant reported for duty at Port Blair. What remains for consideration in this O.A is the challenge against the order Annexure A-11 dated 23.06.2010 and Annexure R-6 dated 23.08.2010.

2. The applicant submitted that the 3rd respondent is not the competent authority to take disciplinary action against the applicant. Treating 379 days as unauthorised absence visits the applicant with civil consequences. The



impugned proceedings are violative of principles of natural justice. No memorandum of charges was issued to the applicant. Without conducting an enquiry and submitting a report, the penalty of unauthorised absence is imposed on him which is violative of principles of natural justice.

3. In the reply statement filed on behalf of the respondents, it was submitted that the 3rd respondent has been declared as Head of Office and Controlling Officer in respect of Doordarshan Kendra, Kozhikode, as per Annexure R-1 dated 07.12.2007. Further, as per Rule 14 of Delegation of Financial Powers Rules, 1978, the 3rd respondent who is a Group-A officer can be declared as Head of Office. Various memos seeking explanation were issued to the applicant during 2008, 2009 and 2010 for his unauthorised absence. But no reply was received from the applicant. The period of absence for 379 days was treated as dies non. Although the transfer order was issued as early as February, 2010 and the applicant was relieved on 25.06.2010 only in view of his request to relieve him on 01.05.2010. The Head of Office, Doordarshan Kendra, Kozhikode is the appointing authority in respect of Floor Assistants and as such he is the Disciplinary Authority for the Floor Assistant. The 379 days mentioned in Annexures A-3 and A-4 are upto that date and the applicant absented himself from duties even after that till the date of relieving i.e. upto 25.06.2010, making the total period of absence of 437 days. The applicant was in the habit of signing the attendance register over the absent marking. The applicant has been paid salary for the days of his presence and for the period of leave submitted by him. The applicant can submit an appeal to the Deputy Director General (SZ) who is the appellate authority, if he is aggrieved by any of the decision by the

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Head of Office.

4. We have heard Mr. P.V. Mohanan, learned counsel for the applicant, Mr. N.N. Sugunapalan (Sr.) with Mr. Sujin, learned counsel for the respondents 1, 2 and 4 and Mr. S. Sujin, learned counsel for the respondent No.3 and perused the records.

5. The admitted fact is that the applicant has been imposed dies non for a period of 379 days in the year 2008 and 2009. The question to be decided is whether the 3rd respondent is competent to issue the order of dies non as he is only the Incharge Head of Office. Vide office order dated 07.12.2007, the 3rd respondent has been declared as Head of Office and Controlling Officer in respect of Doordarshan Kendra, Kozhikode. The said order is extracted as under :

"PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL : DOORDARSHAN
NEW DELHI

No. 22/1/2007-SIV

Dated : 07.12.2007

OFFICE ORDER

In supersession of all previous orders and in exercise of powers conferred by Rule 14 of the Delegation of Financial Powers Rules, 1978, Director General, Doordarshan hereby declares Shri K.V. Padmanabhan, ASE, DDK, Calicut as Head of Office and Controlling Officer in respect of DDK, Calicut till regular Director/SE join at DDK, Calicut.

Sd/-
(JUGLAL SINGH)
DEPUTY DIRECTOR (ADMN.)"

6. As per Swamy's Master Manual for DDOs & HOOs Part-II



Establishment, Head of Office is the competent authority for Group-C post in non Secretariat Office. The Section 4 of the said Manual reads as under :

"4. Appointing Authorities:- Authorities who have been vested with powers to appoint persons to various posts / services in different departments have been specified in the Schedule to CCS (CCA) Rules, 1965. Generally Ministries / Departments are empowered to appoint persons to Group 'A' and Group 'B' posts, while in some cases Heads of Departments are also competent to appoint persons to Group 'B' posts. Appointment to Group 'C' and Group 'D' posts is made by Heads of Offices. However, there are a few exceptions in relation to certain departments and the Schedule mentioned has to be referred to. Extracts from the Schedule, which are most commonly applicable to various departments, are given below for ready reference.

<i>Sl. No.</i>	<i>Description of Posts</i>	<i>Appointing Authority</i>
1.	General Central Services, Group 'C' posts in Non-Secretariat Offices other than posts in respect of which specific provision has been made by a general or special order of the President.	Head of Office.
2.	Group 'C' posts in Union Territories.	Head of Office or such other authority as may be specified by the Administrator.
3.	All Group 'C' posts other than LDCs in the Departmentalized Accounts Offices.	Controller of Accounts or Dy. Controller-General of Accounts in the Min. / Dept., where there is no Controller of Accounts.
4.	Posts of LDCs in the Departmentalized Accounts Offices.	Dy. Controller of Accounts or Under Secretary in the Min. / Dept., where there is no Dy. Controller of Accounts.
5.	Group 'D' posts in Non-Secretariat Offices other than posts in respect of which specific provision has been made by a general or specific order of the President.	Head of Office.
6.	Group 'D' posts in Union Territories.	Head of Office or such other authority as may be specified by the Administrator.
7.	All Group 'D' posts in the Departmentalized Accounts Offices.	Deputy Controller of Accounts or Assistant Controller-General of Accounts in the Min. / Dept. where there is no Chief Controller of Accounts.

[Part III of the Schedule to CCS (CCA) Rules, 1965.]



NOTE.- The powers to make appointments to various posts vested with the authorities mentioned in the Schedule are statutory powers. These powers cannot be re-delegated by such authorities to junior officers. If, however, in the absence of regular incumbent of Head of Office, a junior officer is declared as Head of Office under Rule 14 of Delegation of Financial Powers Rules, he can exercise these powers. An officer performing current duties of a post can only exercise administrative and financial powers of the post. He cannot exercise the statutory powers attached to that post.

[GID (5) below Rule 13 of DFPR.] "

7. The applicant being a Group-C employee, the Head of Office i.e., the 3rd respondent, is the appointing authority. The note to the Section 4 above, makes it clear that in the absence of regular incumbent, a junior officer can be declared as Head of Office under Rule 14 of Delegation of Financial Powers Rules, 1978. Further, vide Office Memorandum at Annexure R-6 dated 23.08.2010, the Deputy Director General (IC), DG:DD, has approved the dies non imposed on the applicant. It has also been made clear that the Floor Assistant being a Group-C post, Head of Kendra is a competent authority to take necessary action as per rule, under intimation to the Directorate. The said O.M is reproduced as under :

"PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL : DOORDARSHAN
DOORDARSHAN BHAWAN : NEW DELHI

No. 2/4/2009-S.1/424

Date : 23.08.2010

OFFICE MEMORANDUM

Sub: Unauthorised absence of Shri M.J. Sebastian, Floor Assistant, DDK, Kozhikode.



Reference DDK, Kozhikode letter No. DDK-CLT-se1 (2010)/1915, dated 15.03.2010 on the subject cited above.

2. The case of unauthorised absence of Shri M.J. Sebastian, Floor Assistant, DDK, Kozhikode has been thoroughly examined/inquired by Shri S.K. Grover, DDG (I/C), DG:DD has approved to dies non the period of unauthorised absence of Shri M.J. Sebastian, Floor Assistant, based on facts finding inquiry report provided by Sh. K.K. Grover, DDG (I/C).

3. Floor Assistant being a Group 'C' post, therefore, Head of Kendra is a competent authority to take necessary action as per rule, under intimation to this Directorate.

This issues with the approval of DG: Doordarshan.

Sd/-
(Sanjeev Verma)
Dy. Director (Admn.)"

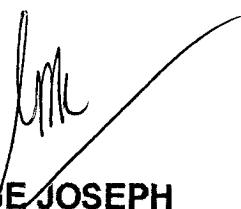
Dies non has been imposed on the applicant by the competent authority under intimation to the higher authority which has endorsed it subsequently. We do not find any illegality in the matter. The applicant if aggrieved can file an appeal against the order of dies non to the Deputy Director General.

8. Dies non is not a punishment listed in the CCS (CCA) Rules, 1965. Therefore, the question of issuing memorandum of charges under the CCS (CCA) Rules does not arise in the matter of imposing dies non for unauthorised absence under F.R.17-A. The stand of the applicant that no memorandum of charges is issued to him and no enquiry officer was appointed to enquire into the charges and without conducting an enquiry and getting the report, the penalty of dies non cannot be imposed on him, has no leg to stand on. Devoid of merit, the O.A is liable to be dismissed.



9. In view of the above, the O.A. is dismissed with no order as to costs.

(Dated, 25th October, 2011)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.