

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 594/91 x 99x

DATE OF DECISION 30.7.1992

Mrs Lilly Mathew _____ Applicant (S)

Mr M Balakrishna Pillai _____ Advocate for the Applicant (S)

Versus

Union of India (Secretary, Ministry of Communications) _____ Respondent (S)
and another.

Mr NN Sugunapalan, SCGSC _____ Advocate for the Respondent (S)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV 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 ? *Ans*
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

(Hon'ble Shri AV Haridasan, JM)

The applicant, Smt Lilly Mathew, an ex-employee under the Senior Superintendent of Post Offices, Alwaye Division, has filed this application under Section 19 of the Administrative Tribunals Act praying that the order dated 15.3.1982 of the Senior Superintendent of Post Offices, Alwaye, imposing on her the penalty of compulsory retirement and the order dated 21.3.1991 of the appellate authority rejecting her appeal may be set aside and that the respondents be directed to reinstate her in service with

all consequential benefits. The case of the applicant in a nutshell is as follows:-

2. While the applicant was working as a Clerk under the Senior Superintendent of Post Offices, Alwaye, she availed leave and joined her husband at Lesotho, Southern Africa, as she was called there. The leave was initially granted upto 25.2.1980 for six months. She had applied for extension of leave for a period of two years from 26.2.1980, but was served with a notice to appear before the Inquiry Officer to face an inquiry under rule 14 of the CCS (CCA) Rules for the misconduct of unauthorised absence. She participated in the inquiry in part. She rejoined duty in December, 1981 and worked till second week of March, 1982. As her presence was immediately needed at Lesotho, she again applied for leave and left India. Thereafter, she was compulsorily retired by order dated 15.3.1982 as a penalty. The above order of penalty was not communicated to her. On coming back to India, she filed OA 504/90 before this Tribunal praying that the Department may be directed to furnish her with a copy of the order of punishment alleging that the said order along with some other records were lost in transit. As directed in the final order in OA 504/90, a copy of the order of compulsory retirement was supplied to her on 19.8.1990. The applicant had also sent a petition to the Regional Director of Postal Services dated 22.5.1990 requesting for her reinstatement. On the basis of the above representation, the Assistant

Director in the office of the Postmaster General, Kochi had sent her a letter dated 11.10.1990 informing her that she might prefer an appeal to the Director of Postal Services, Kochi, if she so desired, mentioning the details of the punishment order, grounds on which the appeal was to be considered and the reason for belated submission of the appeal. But before receipt of that order, the applicant had on 3.10.1990 preferred an appeal against the order dated 15.3.1982 a copy of which was received by her on 19.8.1990. This appeal was rejected by the 2nd respondent by the impugned order dated 21.3.1991 on the ground that it was time-barred. It is in these circumstances that the applicant has filed this application. It has been averred that the inquiry was not properly held, that the order of punishment was not communicated to her and that the appellate authority has gone wrong in rejecting the appeal without due application of mind.

3. The respondents in their reply statement have contended that the inquiry was held properly in conformity with the principles of natural justice, that the applicant took part in the inquiry in part, that as the applicant left India and the communications sent to her were returned unserved, the remaining part of the inquiry was held ex parte, that the order of compulsory retirement was communicated to her, that pursuant to the order of compulsory retirement, the applicant had, by her letter dated 29.5.1984 applied for pensionary benefits, that she has been drawing pension



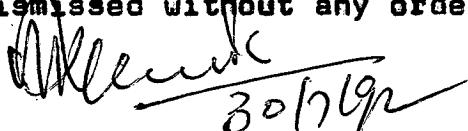
on the basis of her application dated 29.5.1984 and that her claim that she was unaware of the order of compulsory retirement being devoid of bonafides, the contention of the applicant that the rejection of the appeal as time-barred as devoid of is unsustainable ~~does not deserve any~~ merit and hence the application is liable to be dismissed.

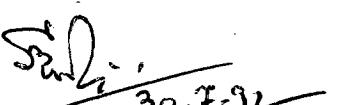
4. We have gone through the pleadings and documents and have also gone through the file relating to the inquiry. We have also heard the learned counsel on either side. The case of the applicant is that the first time that a copy of the punishment order received by her was only on 19.9.90 and that, therefore, the rejection of the appeal filed on 3.10.1990 on the grounds that it is time-barred is unsustainable. The applicant had in OA 504/90 averred that she had lost the order of punishment served on her in transit and had prayed that the Department be directed to furnish her with a copy of the order. Therefore, there is a clear admission that the order of punishment dated 15.3.1982 ^{had been} was communicated and received by ^{to} to her. But basing on the averment in the reply statement in OA 504/90 that the penalty order sent to the applicant was returned unserved, the applicant has averred in this application that the statement in her application in OA 504/90 that the order of compulsory retirement was lost in transit was made by ~~xxxxx~~ a mistake. But the applicant had as early as on 29.5.1984 applied to the Superintendent of Post Offices, Alwaye for settlement of her pensionary benefits stating that she was compulsorily retired with effect from 15.3.82.



A zerox copy of the application dated 29.5.1984 requesting for settlement of pensionary benefits has been produced by the respondents as Annexure R2. So, it is evident that at least on 29.5.1984, the applicant was aware that she had been compulsorily retired ~~W.e.f~~ 15.3.1982 and had accepted that position. The respondents have averred in the reply statement that the applicant has all along been receiving pension sanctioned to her on the basis of her application dated 29.4.1984. This averment in the reply statement has not been controverted by the applicant by filing a rejoinder. So, the applicant has been receiving pension from 1984 onwards. The applicant who has been retired from service compulsorily from 15.3.1982 and has been receiving pension from 1984 onwards accepting her compulsory retirement, cannot after a lapse of six years, be heard contending ^{against} her compulsory retirement. The appellate authority, therefore, was right in rejecting her appeal as time-barred. We do not find any reason for judicial intervention in this case.

5. In the result, the application fails and the same is dismissed without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

30.7.1992

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
R.A. No. 118/92 in
O. A. No. 594/91.
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DATE OF DECISION 02.11.92

Smt. Lilly Mathew, Review Applicant (s)

Shri Balakrishna Pillai Review
Advocate for the /Applicant (s)

Versus
Union of India (Secy., Min. Respondent (s)
of Communications) & another

----- Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP Mukerji - Vice Chairman

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The Hon'ble Mr. AV Haridasan - Judicial Member

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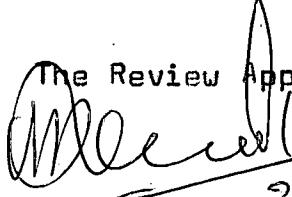
JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant in the Original Application has filed this Review Application praying for a review on the ground that the only question which arose for consideration in the OA "whether the appellate order impugned in the case was cryptic or not" has not been adjudicated in the order which is erroneous and is liable to be reviewed. The review application is misconceived and tricky. The applicant had prayed "to quash the order dated 15.3.1982 under which the penalty of compulsory retirement imposed on the applicant and non-speaking order of the appellate authority

passed on 21.1.1991 rejecting the applicant's appeal and to order reinstatement of the applicant with consequential benefits". On a consideration of the pleadings and the materials on record, we found that the rejection of the appeal as time barred was perfectly justified. Therefore, we dismissed the OA. The OA was not for a declaration that the appellate order was a cryptic one as is mentioned in the RA. If on the basis of the facts, circumstances and evidence, the Tribunal was satisfied that the appellate order ^{was} justified, this Tribunal was right in dismissing the application. There is absolutely no error apparent on the face of records or any other circumstance requiring a review of the order.

2. The Review Application is rejected by circulation.


(AV HARIDASAN)
JUDICIAL MEMBER

21/11/92


(SP MUKERJI)
VICE CHAIRMAN

2.11.92

02.11.92

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