

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T.A. No.

597

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DATE OF DECISION 20.11.91

Philip Oommen

Applicant (s)

Mr. M. R. Rajendran Nair

Advocate for the Applicant (s)

Versus

The Chief General Manager,
Telecommunications, Kerala Cirepondent (s)
Trivandrum and another

Mr. P. Sankarankutty Nair, ACGS Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
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

MR. N. DHARMADAN, JUDICIAL MEMBER

The prayers in this application filed under section 19 of the Administrative Tribunals' Act, 1985 read as follows:

- "i) To declare that applicant continues in service as a Government servant, JTO and to direct the respondents to allow the applicant to join duty by giving him a suitable posting.
- ii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant and
- iii) Grant the cost of this Original Application."

2. The applicant while working as Instructor, RTTC, Trivandrum as per office memo dated 13.11.1979, proceeded on medical leave in the year 1981. Thereafter, he did not

join duty after the expiry of the leave. According to the applicant "due to reason beyond his control" he could not join duty. He was sending leave applications regularly but did not get any communication regarding the sanction of the leave. During 1985-86 he received intimation regarding charge memo and certain proceedings of enquiry for the alleged misconduct of unauthorised absence. The applicant did not defend the case but "he has not received any final orders so far." Hence the applicant contended that he is continuing in the service and no order has been served on him either imposing any punishment or terminating his service. He submitted Annexure-II letter dated 18.10.1990 seeking permission to rejoin duty in the service. Since no reply was received, he has filed this application with the aforesaid prayers.

3. Respondents have filed a statement and a reply contending that the applicant was eligible for leave upto 28.1.1982 and he unauthorisedly absented himself from duty from 28.1.1982. A charge xxxx was framed against him for his unauthorised absence from duty and it was communicated to him on 27.10.1983. But he did not sent any reply nor did he defend the disciplinary proceedings initiated under Rule 14 of the CCS (CCA) Rules 1965. All further communications issued to him in connection with the disciplinary enquiry were received back with the endorsement "addressee is in Kuwait" and addressee's wife told that he was not available

at station and his whereabouts not known." Finally, the applicant was removed from service w.e.f. 13.5.85. In fact the applicant abandoned his job and went to Kuwait for alternative job. Therefore the order passed against him in 1985 became final. The present attempt of the applicant is to get the service benefits under the guise that he is ignorant of the proceedings taken against him for his unauthorised absence from 1982. The leave applications submitted by the applicant for leave from 26.12.80 to 27.1.1982 were duly sanctioned but the further leave applications for leave upto 18.3.84 could not be recommended for sanction for want of leave and shortage of JEs in RTTC. In fact the applicant was directed to be present for medical examination when he had applied for leave continuously after 28.1.1982 on medical grounds. The said letter was sent to him in his last known address as per the official records. It was returned with the remarks " addressee left. whereabouts not known." The District Medical Officer to whom communication was sent has reported that the applicant did not appear for medical examination. Thus the applicant had been absenting himself unauthorisedly without getting sanction of the leave from the competent authority w.e.f. 28.1.82. The applicant acknowledged the charge memo on 1.12.1984. Hence his submission that during 1985-86 he received intimation regarding charge memo and certain proceedings of enquiry for the alleged misconduct of unauthorised absence is a false

statement. Ext. R-1 is the punishment order which has been served on the applicant along with the statement dated 13.5.91 filed in this case.

4. We have heard arguments and perused the records. This is a case in which the applicant admittedly absented from ^{himself} duty from 28.1.1982. According to the applicant, after the expiry of ^{the} leave, due to the reasons beyond his control he could not join duty. He has not given what exactly is the reason and ^{for} to which period he was prevented from joining duty on account of reasons beyond his control. It is unbelievable that from 28.1.1982 till the submission of Annexure-II letter dated 18.10.90 the applicant was physically prevented from either enquiring whether the applications for leave submitted by him have been sanctioned by the competent authority or from reporting to the office ^{or} to get further directions from competent authority on the expiry of the leave to join duty. He has no case that he is bed-ridden due to physical incapacity during the whole period from 1982 to 1990 and thereby it was impossible for him to report for duty. On the other hand, the respondents have given sufficient ^{to show} that the applicant was not available in India. The ~~xxxxxx~~ remarks of the Postal authorities in the communication sent to the applicant indicate that the applicant was in Kuwait and that the applicant's wife informed that he was not available in India during that time in station. Under these circumstances, it is to be presumed that the applicant was out of India without leaving his correct address so as to enable the

the respondents to take steps for intimating all notices and communications in connection with the disciplinary action initiated against him. It is stated in the reply statement and in the Annexure R-1 punishment order that the applicant had received the memo of charges on 1.12.83 but he did not submit any reply nor did he contest the matter. It is obligatory on the part of the applicant to submit his objection to the memo of charges if the charges are false and unsustainable. The failure on his part to object to the charges after the receipt of the same shows that the allegations contained in the charges are admitted by the applicant. He has no case before us that the charges are false.

5. It is also to be noted that the applicant has not taken any action against the punishment order Annexure R-1 which has been communicated to the applicant through his counsel with a copy of the reply of the respondents dated 13.5.91 xxxxxxxx filed before this Tribunal. The applicant has also not filed any rejoinder denying the statements in the xxxxxx statement of the respondents and the reply filed in this case.

6. The facts and circumstances of this case clearly indicates that the applicant was not really interested in continuing his engagement under the respondents presumably because he got better engagement in Kuwait as contended by the respondents in the reply statement. The very fact that the applicant did not care to enquire as to whether his

leave applications submitted after 28.1.82 till 18.3.84 were duly sanctioned by the competent authority and that he did not furnish his correct address during the period when he was out of India, also reinforce our conclusion that the applicant is a defaulter. He was not keen in contesting the memo of charges when the same was received by him on 11.12.1983. This shows that the applicant was not really interested in continuing in service under the respondents. Hence, under these circumstances it can be presumed that the applicant has abandoned the job because the circumstances of the case indicate that the applicant was not very serious in continuing in service. In spite of the fact that the applicant was notified first time directing him to appear before a Medical Officer for examination and second time calling upon him to show cause against the charges or file his objection, he refrained from either appearing before the Medical Officer for examination or contesting the charges or even attempting to join duty in 1983. Apart from all these facts, the applicant has no explanation to offer before us for his long absence. Hence, his case that he was prevented from joining duty after the expiry of the leave for reasons beyond his control is/false case and cannot be accepted. Having regard to the facts and circumstances of the case, his termination is legal and valid.

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7. Under these circumstances, we see no merit in the application and all the contentions of the applicant are liable to be rejected. We do so.

8. The application, ^{is} therefore, is to be rejected. Accordingly, we dismiss the application.

9. There will be no order as to costs.

N. Dharmadan
20. 11. 91.

(N. DHARMADAN)
JUDICIAL MEMBER

S. P. Mukerji
20. 11. 91.

(S. P. MUKERJI)
VICE CHAIRMAN

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