IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

(3)

O.A. No. 64/ 1990
~~T.A. No.~~

DATE OF DECISION 30.8.90

P. T.Varghese
Applicant (s)

M/s. M.R Rajendran Nair &
~~P.V Asha~~
Advocate for the Applicant (s)

Versus

UOI rep. Secretary,Communication and others
Respondent (s)

Mr.A.A.Abdul Hassan,ACGSC
Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V KRISHNAN,ADMINISTRATIVE MEMBER

&

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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? no

JUDGEMENT

HON'BLE SHRI N.DHARMADAN,JUDICIAL MEMBER

The applicant, who is working as a Lineman in the Telephone Exchange at Kanjirappally, filed this application to quash Annexure-I proceedings dated 20.6.1988 apparently issued by the Sub Divisional Officer in pursuance of the observations of this Tribunal in the earlier judgment in TAK 100/87 at Annexure-II.

2. When the disciplinary proceedings were taken against the applicant he filed O.P.683/82 before the High Court which was transferred to this Tribunal and disposed of as per Annexure-II judgment after renumbering it as

TAK 100/87. The operative portion of the judgment in Annexure-II reads as follows:

> " In view of the facts and circumstances indicated above, we allow the application with the direction that the petitioner should be considered to be on duty with full pay and allowances between 18.9.80 and 1.6.82 and he should be paid the arrears of such pay and allowances within a period of three months from the date of communication of this order. The respondents will be at liberty to start disciplinary proceedings if so advised, against the applicant on the question of the alleged unauthorised absence from duty between 25.7.81 and 1.6.82 and take such action as is necessary in accordance with law."

3. The question that arises for consideration is limited to the period of suspension from 26.7.81 to 1.6.82 and the eligibility of allowances due thereof to the applicant.

4. The applicant's case is that after the judgment at Annexure-II the third respondent by Annexure-III order dated 10.2.1988 informed him that payment of arrears for the period from 26.7.1981 to 31.5.1982 was liable to be withdrawn as he was unauthorisedly absent during that period. Thereafter the second respondent by Annexure-IV memo dated 12.4.88/treat decided to the period between 26.7.81 to 1.6.82 as dies-non under FR 17-A making it clear that it will neither count as service nor be construed as break in service. The applicant was given a period of seven days to submit his representation, if any, or file objection to the proposal. The applicant submitted Annexure-V reply to Annexure-IV seeking clarification as to whether his

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pay and allowances for the period from 26.7.81 to 1.6.82 have been drawn and paid to him or not. Without any further clarification as desired in Annexure-V, the SDOT issued an order Annexure-I on 20.6.88 stating that the applicant is not eligible to be paid pay and allowances for the period 26.7.1981 to 1.6.1982 and his unauthorised absence during the aforesaid period 'will be treated as dies non.' The applicant again sent Annexure-VI dated 21.11.1989 to the District Manager in which he has stated that he did not receive any clarification as sought for by him in Annexure-V. The SDOT passed the order arbitrarily without giving the clarification and stating that he is not eligible to draw pay and allowances for the period from 26.7.81 to 1.6.82. This is illegal.

5. It is at this stage the applicant filed this application with the following prayers:

"i) To quash Annexure-I

ii) Direct payment of the pay and allowances due to the applicant from 26.7.81 to 1.6.82 with 18% interest from the date on which payments were actually due.

iii) Grant exemplary cost to the applicant.

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6. In the counter affidavit filed by the third respondent it is stated that the show cause

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notice Annexure-IV contains only a proposal to treat this period as unauthorised absence and the clarification sought in Annexure-V by the applicant viz. whether the applicant's pay and allowances for the period from 26.7.81 to 1.6.82 have been drawn and paid to the applicant is not relevant. Hence, he has passed Annexure-I order considering Annexure-V because the information sought had been given to the applicant as per Annexure R-3(A) letter dated 5.3.1988 that the arrears of pay and allowances have already been paid to the applicant. The applicant had not filed any appeal against Annexure-I till 21.11.89, but filed Annexure-VI which was disposed of by DGM on 18.11.90 (Annexure R-3(B) upholding Annexure-I. It is further stated in the counter affidavit that he was placed under suspension in connection with disciplinary proceedings on 18.9.80. This suspension was revoked by order dated 7.7.1981 and it was sent to the applicant by registered post but he refused to accept this letter. In this order it was stated that the suspension will be deemed to have ceased from the date of joining duty as Lineman at Erumeli. A revised order dated 21.7.81 was issued, since the earlier order was not accepted by the applicant, stating that the suspension was revoked with effect from the afternoon of 25.7.81 and that he was transferred to Erumeli and that the overstayal from 26.7.81 is liable to be treated as unauthorised absence. This second

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letter was also returned undelivered. Hence the respondents have contended that the order of suspension is communicated to the applicant and the suspension is revoked on the afternoon of 25.7.81.

7. The applicant is keenly contesting the matter against the department. This is the second time he is coming before this Tribunal. This time he is attacking the action taken by the respondents pursuant to the judgment of this Tribunal at Annexure-II. The contention raised is that the impugned order was passed without giving the applicant the necessary information sought by Annexure-V so as to enable him to file objections to Annexure-IV notice.

8. So the main argument of the learned counsel, Shri M.R. Rajendran Nair, is that Annexure-I order is violative of principles of natural justice. This ground is based on a mistaken impression about the application of principles of natural justice in matters of administrative disposals. The main requirements of a fair hearing are:

(i) a person must know the case he has to meet and

(ii) he must have adequate opportunity to meet the case.

The test is, was he told about the gist of allegations or did he get the means of knowing what it was and the details of the action proposed against him. " No man shall be hit below the belt- that is the conscience of the matter" (See Board of Mining Examination Vs. Ramjee, AIR 1977 SC 965). The Supreme Court in R.S. Das's case, AIR 1987 SC 593 observed:

> "Rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and statutory provision, nature of right which may be affected and the consequences

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which may entail, its application depends upon the facts and circumstances of each case"

Prof. Paul Jackson's (Natural justice by Paul Jackson 2nd Edn page 11), explanation for "fairness" has been accepted by Jaganatha Shetty J., in Management of Nally Bharath Eng. Co. Ltd. Vs. State of Bihar and others, 1990 (2)SCC 48," as a fundamental principle of good administration." "Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time hallowed phrase"that justice should not only be done but be seen to be done" is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form of procedure. It depends upon the facts of each case. As Lord Pearson said in Pearlberg Vs. Varty (1972 (1) WLR 534), fairness does not necessarily require plurality of hearings or representations and counter representations. Indeed, it cannot have too much elaboration of procedure since wheels of administration must move quickly." With this principle in mind we may examine the contention of the learned counsel in this case.

9. In the instant case when ~~xxxxxxxx~~ Annexure-III was issued to the applicant on 10.2.88 informing him that the payment of arrears for the period between 26.7.81 to 31.5.82 is liable to be withdrawn, the applicant kept

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quiet. He did not seek any clarification as to whether this amount was drawn and paid to him. But it is seen from Annexure R-3(A) that the applicant sent a representation to Telecom District Engineer on 11.1.88 and in answer to the same he was informed " arrears of pay and allowances have already been paid" to him. Thereafter, Annexure-IV memo was issued to him on 12.4.88 after finding that the applicant unauthorisedly absented himself from duty during this period. Without filing any objection he pretended ignorance of Annexure R-3(A) and sought clarification by Annexure-V as to whether he received the pay and allowances for the period. There is no explanation why he did not seek clarification when Annexure-III was received by him. Since this information was already given to the applicant and he was fully aware of the details he filed Annexure-V simply to delay the matter and not to get any clarification relevant for filing objections. However, he did not choose to avail the opportunity by filing his objection within the specified time, instead he sought for clarification, as if he is not aware of the details of the payments as stated in Annexure R-3(A). Further, it is difficult to understand how such a clarification as to the receipt of the pay and allowances is a relevant information necessary for filing his objection to Annexure-IV which deals only with FR 17(1) and imposition

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of dies non. The applicant's conduct in having refused to accept the communications and letters sent to him by the respondents in connection with the suspension and revocation in 1980 and 1981 as disclosed in the counter affidavits filed in this case and TAK 100/87, (the applicant refused to receive consistently all registered letters containing order No.X/15/B/10 dated 27.5.81, subsequent order relieving him from Kanjirappally when he was transferred to Erumeli, further order No.X 15/B/13 dated 25.6.81, order No. X 15/B/20 dated 7.7.81, etc.,), indicates that the applicant would not cooperate with the respondents in continuing steps for completing the disciplinary proceedings as indicated by this Tribunal in Annexure-II judgment.

10. Under these circumstances there is nothing wrong if the SDOT had presumed that this is only a devise adopted by the applicant for delaying the matter and passed the impugned order Annexure-I without giving any further time to file his objections. Moreover, on the facts and circumstances of the case, Annexure-1 is not treated by the applicant as a final decision. It indicates that the period from 26.7.81 to 1.6.82 "will be treated as dies non" and the applicant filed a detailed objection Annexure-VI on 21.11.1989.

11. After considering Annexure-VI objection submitted by the applicant on 21.11.89 against Annexure- 1,

the DGM considered his case and passed a final order upholding Annexure-I and communicated to the applicant by annexing it along with the counter affidavit as Annexure R-3(B). The applicant has not challenged this final proceedings issued to him, which in fact has superseded the impugned order at Annexure-I.

12. The applicant also submitted that it is not open to the respondents to treat the period as dies non after Annexure-II judgment and FR 17 is not applicable to the facts of this case. He has not raised such objection before the authorities. Yet it is to be noted that even though there is an observation in the last portion of the judgment that the petitioner should be considered to be on duty with full pay and allowances between the period 18.9.80 and 1.6.82 and he should be paid the arrears of such pay and allowances within the period of three months from the date of communication of this order, the Tribunal has given freedom to the respondents " to start disciplinary proceedings, if so advised against the applicant, on the question of the alleged unauthorised absence from duty between 26.7.81 and 1.6.82 and take such action as is necessary in accordance with law." This clause read withthe final sentence in the earlier paragraph of the same judgment will lead to the conclusion that the respondents may take suitable legally permissible steps against the applicant for the unauthorised absence between the period of 26.7.81 to 1.6.82. Accordingly,

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the respondents have issued Annexures III and IV. But the applicant conveniently avoided from objecting the same by raising all the legal contentions.

12. Under these circumstances it is difficult to come to the conclusion that there is violation of principles of natural justice in this case as submitted by the learned counsel and that the final decision for treating the unauthorised absence of the applicant as dies non is bad and unsustainable on that ground. The failure of the applicant to submit his objections to Annexure-IV within the time specified therein is fatal. Hence, it is only to be found that the impugned order cannot be quashed as violative of principles of natural justice.

14. In the result this application is dismissed as devoid of any merit. There will be no order as to costs.

30.8.90

(N. Dharmadan)
Judicial Member

Hon'ble Shri NV Krishnan, Administrative Member

15. It is with great regret that I find it necessary to record this dissenting judgment. The only portion of the judgment of my learned Brother with which I fully agree is the one which deals with the principles

of natural justice and the manner of their application to administrative decisions. I notice that on all remaining issues our perceptions are vastly different and hence it is not surprising that our efforts to render an unanimous decision failed.

16 My learned Brother has concluded that the respondents have given a fair deal to the applicant and nothing more remains to be done except to dismiss his application. He has also come to the conclusion that the applicant has deliberately adopted delaying tactics by seeking irrelevant information from the respondents and invited upon himself the impugned Annexure-I order and that the principles of natural justice have not been violated. As I am in disagreement with these points I proceed to set out my reasons therefor.

17 My learned Brother has held that the impugned order Annexure-I is not a final order as it only states that the period of absence from 26.7.81 to 1.6.82 " will be treated as dies-non". He considers Exbt.R3(b) order of the 3rd respondent disposing of Annexure VI representation of the applicant against the Anhexure-I order to be the final order. As the applicant has not assailed the Ext.R3(b) order, he holds that the applicant is not entitled to any relief.

18 The very fact that this application under Section 19 of the Administrative Tribunals Act impugning the Annexure-I order was admitted shows that Annexure-I is a final order.

That apart, it is clear from Annexure-I that by that order, the proceedings which were initiated by the issue of the show cause notice dated 12.4.88 (Annexure IV) have been brought to a conclusion by the issue of the following order:

> " Hence it is hereby order(sic) that the unauthorised absence period of Shri PT Varghese, LM Phones, KPL i.e., from 26.7.81 to 1.6.82" <u>will be treated as dies-non</u>" No pay and allowances are admissible for this period and will not count for increment, pension, leave etc. This will be without prejudice to any other action that the competent authorities might take against Shri PT Varghese, LM Phones, KPL." (emphasis mine)

There can be no doubt that Annexure-I is a final order even though the future tense has been used in the underlined portion of the first sentence of the extract quoted above.

19. Admittedly, the applicant has not impugned Ext.R3(b) though he had information about this even before the respondents filed their reply. For, the respondents had ~~been~~ made a reference to R3(B) on 19.3.90 when they filed a reply to the petition filed by the applicant for condonation of delay. I will not enter into the question whether the Annexure R3(B) order can stand independently, if Annexure -I order is quashed as prayed in the application. I would like to make only two points in this connection. Firstly, this plea has not been taken by the respondents in their counter affidavit dated 8.5.90 though they should have done so, as they had brought Ext.R3(B) to the notice of the applicant much earlier. Secondly, this view point was not brought to the notice of the counsel

and they were not heard on this issue. I am, therefore, of the view that without giving such an opportunity to the counsel, it will be unfair to reject this application on this ground.

20 The judgment states that when the Telecom District Manager (Respondent-3) sent the Annexure-III letter dated 10.2.88 to the applicant he could have voiced his protest to the threat regarding withdrawal of payments of arrears. In my view there was no need for the applicant to raise any objection at this stage. The applicant was only informed by Annexure-III in continuation of Annexure-II judgment of the Tribunal /that the action that would be taken if the allegation ~~is~~ was proved is withdrawal of the payments of arrears ordered by the Tribunal.

/wherein the Respondents were permitted to take such action as advised

21 The crucial documents are the show cause notice Annexure IV and the applicant's reply Annexure-V. The Annexure IV show cause notice dated 12.4.88 directed the applicant to submit a representation within 7 days of its receipt. The applicant submitted Annexure-V reply dated 10.5.88 to the show cause notice stating that he received it only on 6.5.88 and he sought a clarification whether the pay and allowances for the period from 26.7.81 to 1.6.82 have been paid to him. He assured the second respondent that on receipt of the clarification, he would submit his representation within 7 days thereof.

22 My learned Brother has pointed out that the applicant had already been informed by Annexure R3(a) dt.5.3.88 that the arrears of pay and allowances have already been paid to him. Yet, without filing any objection to the Annexure R3(a) it is stated that the applicant pretended ignorance thereof and sought clarification by Annexure-V as to whether the arrears have been paid. As the information was already with the applicant, the query he had made in this regard in Annexure-V was irrelevant and only intended to delay the proceedings.

23 I have to respectfully disagree with these conclusions. Firstly, the applicant did not pretend ignorance of Annexure R3(a) because in the Annexure-V reply itself seeking clarification, he has referred to Annexure R3(a). Secondly, the clarification sought may not be irrelevant. No doubt, the applicant could have worked out from the information he already had with him whether

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the amounts paid to him included the arrears for the period 26.7.81 to 1.6.82. Nevertheless, there are two grounds on which the clarifications sought by him can be justified. The first is that if the amount had already been paid for that period, the Annexure-IV show cause notice should necessarily have stated that it was proposed to withdraw that amount. This would have been in line with the earlier Annexure-III intimation. The second reason is that if it really transpired that the amount had already not been paid, the applicant would have got a strong ground to proceed against the respondents for committing contempt of the Tribunal by not complying with the directions given in the Annexure-II order. Therefore, the clarifications sought cannot be treated to be totally ~~xxxxxxxxx~~ irrelevant.

24 Even if it was irrelevant, there was no ground to come to the conclusion that this was a delaying tactics because there was no delay in sending the Annexure-V reply and the applicant had assured that the final reply too would be furnished within a week on receipt of the clarification. I am of the view that if Respondent-2 felt that the clarification sought was irrelevant, as stated in the impugned order, he should have informed the applicant accordingly and given him a little time to furnish his final reply.

25 It will be convenient to state at this stage the grounds on which the respondents considered that

the applicant was unauthorisedly absent from 26.7.81 to 1.6.82 on the basis of which the impugned Annexure-I order withholding the pay for that period and treating it as Dies-non was passed. The applicant was under suspension pending a disciplinary enquiry against him. An order dated 7.7.81 revoking the suspension was sent to him by Registered Post. This was refused and returned undelivered. However, the respondents did not choose to take action on the basis of that refusal. On the contrary, they modified that order and issued a fresh order dated 21.7.81 informing the applicant that his suspension was revoked from 25.7.81 and that he was also transferred and posted to Erumeli Exchange. He was also informed that his joining time would count from 26.7.81 and warned that any over stayal was liable to be treated as unauthorised absence. The reply affidavit states" this letter was also returned un-delivered". As we had a doubt whether this letter was also refused by the applicant, the respondents produced the original records, which showed that there was an endorsement of the Postman that the addressee was not available and hence the letter was being returned. The applicant also did not resume duties till 1.6.82 i.e., ~~after~~ until he was acquitted in the disciplinary enquiry against him. The respondent's contention is that the second respondent's letter intimating him of the revocation of his suspension from 25.7.81 is deemed to have been served on him though it was returned undelivered and hence his absence from 26.7.81 to 1.6.82 is unauthorised. For this proposition they rely on AIR 1970 SC-214.

26 My learned Brother has considered whether in the circumstances of this case the respondents have dealt with the applicant keeping in view the principles of natural justice. For the reasons stated by him he has held that in the circumstances of the case it is difficult to come to the conclusion that there is violation of principles of natural justice in this case. This is

the most important finding with which I have to record my dis-agreement.

27 In my view, Annexure-IV cannot be considered to be a show cause notice at all. For, it does not state why the alleged period of absence from 26.7.81 to 1.6.82 was being treated as unauthorised. In fairness to the applicant and to enable him to file a proper reply the grounds as in para 25 should have been communicated to him. It appears that the applicant has not been made aware of these grounds until the reply affidavit in this case was filed wherein these reasons are given.

28 In the Annexure-II judgment also there is no indication as to why the respondents could ,primafacie, treat the period from 25.7.71 to 1.6.82 as one of unauthorised absence. This will be clear from the extract of the judgment reproduced below:

> " They have stated that the suspension order was revoked with effect 29.5.81 by the order dated 27.5.81 and that order sent by post. The order was returned back by the postal authorities with the remarks that the addressee refused to take delivery of the order. By this order the applicant was also transferred from his post at Kanjirapally and he was relieved from that post w.e.f. 30.5.81. His relieving order sent by Reg. Post was also returned undelivered. After assurance from the union authorities the applicant was posted back to his old place but he again misbehaved with the Junior Engineer on 20.6.81 and accordingly, the order of revocation dated 27.5.81 was cancelled on review. Again the the General Manager reviewed the case revoking suspension and posted him to Erumeli. Accordingly the order of suspension was revoked on 7.7.81. Subsistence allowance was paid to the petitioner upto 25.7.81 and since the petitioner absented himself from duty thereafter neither subsistence allowance nor pay could be drawn and disbursed".

(Sic)

It is significant to notice that there is neither any mention in this extract of the fact that the subsequent order revoking the suspension from 25.7.81 was sent by Registered

/ nor of the contention that in these circumstances it is deemed to be delivered.

Post but was returned un-delivered/ Therefore, a perusal of this judgment would not have given a clue to him as to why his absence was being treated as unauthorised.

29 Hence ~~Xxxxxxxxxx~~, in these circumstances, Annexure-IV should, in clear terms, have stated why he is held to be unauthorisedly absent from 26.7.81 to 1.6.82 especially when from the grounds taken by the respondents as stated in para-26 this would appear to be a mixed question of fact and law. This was all the more necessary because/ immediately prior to the issue of Annexure IV notice, the Annexure-II judgment had treated him to be on duty from 18.9.80 to 1.6.82, which includes the period in dispute. Therefore, until it is established to the contrary, the applicant will have to be treated to be on duty and for this ~~xxxxxxx~~ reason/ clear ~~xxxxxxx~~ grounds/ ought to have been stated.

30 I am, therefore, of the view that even the elementary principles of natural justice have been flagrantly violated by the Respondents in issuing the Annexure IV show cause notice. I also hold that a final order should not have been passed without a sending/reply to the Annexure V seeking clarification and waiting for his promised reply.

31 In the circumstances I am of the view that the case remanded Annexure-I order should be quashed and/ ~~xxxxxx~~ to the 2nd respondent to initiate fresh proceedings in accordance with the law against the applicant keeping

in view of the observations made herein.

30/8/90

(NV Krishnan)
Administrative Member

ORDER OF THE BENCH

In view of the fact that we have been unable to reach a unanimous decision in regard to this application, we direct the Registry to send the records of this case to the Hon'ble Chairman of the Central Administra-tive Tribunal, Principal Bench, New Delhi for necessary action under Section 26 of the Administrative Tribunals Act. The specific question for consideration would be whether on the facts and in the circumstances of this case, the impugned Annexure-I order can be upheld or not.

Notices issued to the parties counsel for hearing on 27-11-90 before Hon'ble Shri P.K. Kartha, VC(J)

30.8.90

(N Dharmadan)
Judicial Member

30/8/90

(NV Krishnan)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 64/ 1990
T.A. No.

DATE OF DECISION 29.11.1990.

P.T. Varghese — Applicant (s)

M/s M.R. Rajendran Nair & P.V. Asha — Advocate for the Applicant (s)

Versus

U.O.I. through Secy., Communications & Ors. — Respondent (s)

Mr. A.A. Abdul Hassan, ACGSC — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? yes
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

(By Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The question for consideration is whether the decision of the respondents to treat the period of absence of the applicant from 26.7.1981 to 1.6.1982 as dies non by the impugned Memo. dated 20.6.1988, is legally sustainable.

2. The applicant had filed a writ petition in the Kerala High Court in 1982 which stood transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 (TAK-100/87/OP No.683/82). In the said petition, he had prayed that the respondents should be directed to reinstate him and to pay him subsistence allowance till his reinstatement and to complete the departmental inquiry initiated against him within one month. During the pendency of the petition, the

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respondents passed an order dated 10.11.1986, concluding that the petitioner was not guilty as per the charge-sheet. No order was, however, passed as to how the period of suspension between 18.9.1980 and 1.6.1982, when he was reinstated, should be treated. His other grievance was that he was allowed subsistence allowance only for a part of the period of suspension, i.e., from 18.9.1980 to 25.7.1981 and was paid nothing between 26.7.1981 and 1.6.1982, when he was reinstated.

3. A Division Bench of this Tribunal consisting of Hon'ble Shri S.P. Mukerji, presently Vice-Chairman (A), and Hon'ble Shri G. Sreedharan Nair, presently Vice-Chairman (J), observed in their judgement dated 18.12.87 that "Insofar as the period between 25.7.1981 and 1.6.82, when the petitioner is stated to be on unauthorised absence from duty, we feel that a unilateral decision to withhold his pay and allowances subsequent to his reinstatement on ground of unauthorised absence, is violative of rules of natural justice. It has been held by the Supreme Court in L. Robert D'Souza Vs. E.E.S. Railway, A.I.R. 1982 S.C. 854 that absence without leave constitutes misconduct and it is not open to the employer to terminate the service without notice and inquiry, or at any rate, without complying with the minimum principles of natural justice."

4. In view of the above, the Tribunal observed that non-payment of pay and allowances to the petitioner between 25.7.1981 and 1.6.1982 without giving him a show-cause notice, was illegal. It was concluded that the petitioner

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has to be paid full pay and allowances during the said period, but the respondents would be at liberty to serve a show-cause notice while the pay and allowances should not be withdrawn for this period and only after due process of law and proceedings the question of reduction or withdrawal of his pay during this period can be considered.

5. In view of the facts and circumstances mentioned above, the Tribunal allowed the application with the following direction:-

> ".....The petitioner should be considered to be on duty with full pay and allowances between 18.9.1980 and 1.6.1982 and he should be paid the arrears of such pay and allowances within a period of three months from the date of communication of this order. The respondents will be at liberty to start disciplinary proceedings, if so advised, against the applicant on the question of the alleged unauthorised absence from duty between 25.7.1981 and 1.6.1982 and take such action as is necessary in accordance with law."

6. On 12.4.1988, the respondents issued a memorandum to the applicant stating that he had absented himself from duty from 26.7.1981 to 1.6.1982, that he had not submitted any leave application or obtained any prior permission for his absence, and that his absence cannot be counted for duty to draw pay and allowances as per Rule F.R.17(1). Accordingly, the above period was proposed to be treated as dies non, i.e., it will neither

count as service nor be construed as break in service. The applicant was given an opportunity to submit his representation, if any, within seven days from the date of receipt of the Memo. to defend the above proposal.

7. On 10.5.1988, the applicant acknowledged the above Memo. dated 12.4.1988 and sought clarification from the respondents as to whether his pay and allowances for the period 26.7.1981 to 1.6.1982 had not been drawn and paid to him. He added that he would prefer a representation against the proposal of treating the alleged absence from duty from 26.7.1981 to 1.6.1982 as dies non within seven days on receipt of a reply from the respondents clarifying the points raised in his letter.

8. The respondents treated the aforesaid letter dated 10.5.1988 as the representation submitted by the applicant and passed the impugned order dated 20.6.1988, whereby it was ordered that the unauthorised absence period of the applicant from 26.7.1981 to 1.6.1982, would be treated as dies non. No pay and allowances were admissible for this period which will not count for increment, pensionl leave, etc. It was added that this would be without prejudice to any other action that the competent authorities might take against the applicant.

9. It is in the above factual matrix that the question under reference has been raised before me for consideration by Hon'ble Mr. N.V. Krishnan, Administrative Member, and Hon'ble Mr. N. Dharmadan, Judicial Member, in their separate and dissenting judgements dated 30.8.1990. While Hon'ble Mr. Dharmadan

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has come to the conclusion that there is no violation of principles of natural justice in this case and on that ground the application is devoid of merit, Hon'ble Mr. Krishnan has concluded that the principles of natural justice have been flagrantly violated by the respondents and that after quashing the impugned order dated 20.6.88, the case should be remanded to the respondents to initiate fresh proceedings in accordance with law against the applicant.

10. I have carefully gone through the records of the case and the judgements written by both the Hon'ble Members and have heard the learned counsel for both the parties. At the outset, it may be mentioned that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS (CCA) Rules) constitute a complete code of the principles of natural justice, insofar as they are relevant to the various misconducts on the part of Government servants. One need not look into other authorities to ascertain those principles.

11. The Division Bench, in its judgement dated 18.12.1987, had issued two directions to the respondents in the operative part thereof, namely,:-

(i) To consider the applicant to be on duty with full pay and allowances between 18.9.1980 and 1.6.1982 and to pay the amounts due to him for the said period; and

(ii) To give liberty to the respondents to start disciplinary proceedings against the applicant with respect to the alleged unauthorised absence from duty between 25.7.1981 and 1.6.1982, in accordance with law.

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12. The respondents have complied with the first part of the direction. With regard to the second direction, they had purported to comply with the same but the applicant has called in question the manner in which they have proceeded in the matter.

13. Rule 11 of the C.C.S.(CCA) Rules enumerates the penalties which may be imposed on a Government servant for good and sufficient reasons. These penalties have been broadly brought under two main heads - Minor Penalties, and Major Penalties. Before starting disciplinary proceedings against a Government servant, the disciplinary authority has to apply its mind and consider whether on the basis of the material on record, the proceedings should be for imposing a minor penalty or a major penalty. The procedure in respect of either of them has been separately set out in Rules 14 and 16 of the C.C.S.(CCA) Rules, 1965. Under the scheme of the C.C.S.(CCA) Rules, proceedings for imposing major penalty are started by the disciplinary authority by serving a charge-sheet on the Government servant concerned which would contain the articles of charge against him, the statement of imputations of misconduct or misbehaviour in support of the articles of charge, a list of documents by which the articles of charge are proposed to be sustained and a list of witnesses by whom the articles of charge are proposed to be sustained. The Government of India have standardised the Form of the charge-sheet for major penalties envisaged in Rule 14 of the C.C.S.(CCA) Rules (See Swamy's Compilation of CCS (CCA) Rules by P. Muthuswamy, 16th Edn., pages 154-155).

14. As regards minor penalties, Rule 16 of the C.C.S. (CCA) Rules lays down the procedure. Accordingly, a

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full-fledged inquiry in the manner laid down in Rule 14, has to be made in every case in which the disciplinary authority is of the opinion that such inquiry is necessary. In other cases, the Government servant should be informed in writing of the proposal to take action against him and of the imputations of the misconduct or misbehaviour on which it is proposed to be taken and he has to be given reasonable opportunity of making such representation as he may wish to make against the proposal. It is only after the disciplinary authority takes into consideration the representation/the record of inquiry and after recording a finding on each imputation of misconduct or misbehaviour, that it can pass the final order of imposition of penalty or exoneration of the Government servant concerned, as the case may be. The Government of India have standardised the form in which the memorandum of charge for minor penalties should be issued to Government servants (vide Swamy's Compilation of C.C.S.(CCA) Rules, ibid, pages 158-159).

15. The learned counsel for the applicant urged that the Memo. issued to the applicant on 12.4.1988, does not contain any imputations of misconduct or misbehaviour on the part of the applicant, that it was not for which the Division Bench of this Tribunal in its judgement dated 18.12.1987, gave opportunity to the respondents and that consequently, the impugned Memo. dated 20.6.1988 is not legally sustainable. The learned counsel for the respondents did not controvert the statement that the impugned Memo. dated 12.4.1988 does not contain any imputations of misconduct or misbehaviour.

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16. After considering the facts and circumstances of the case and the conflicting opinions expressed by Hon'ble Mr. Krishnan and Hon'ble Mr. Dharmadan, I have come to the conclusion that the impugned memoranda dated 12.4.1988 and 20.6.1988 are not legally sustainable as they are not in conformity with the provisions of the C.C.S.(CCA) Rules, 1965. I, therefore, set aside and quash both the aforesaid memoranda with a direction that the case be remanded to the second Respondent to initiate disciplinary proceedings against the applicant, if they so choose, in accordance with law and in the light of the observations contained herein above. Any amount recovered from the applicant be refunded to him forthwith.

17. The matter may now be placed before the Division Bench to pass appropriate final orders on this application.

29/11/90

(P.K. Kartha)
Vice-Chairman (Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 64/90 ~~199~~
~~TAXXNo.~~ XXX

DATE OF DECISION 7.12.90

P.T.Varghese — Applicant (s)

M/s M.R.Rajendran Nair & P.V.Asha — Advocate for the Applicant (s)

Versus

~~Union of India (Secretary~~ Min. of Communications) & 2 others — Respondent (s)

Mr. A.A.Abul Hassan — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement? ✗
4. To be circulated to all Benches of the Tribunal? ✗

JUDGEMENT

N.V.Krishnan, AM

This case was referred to the Hon'ble Chairman, Central Administrative Tribunal under section 26 of the Administrative Tribunals Act for appropriate action.

2. In view of the decision rendered by Hon'ble Shri P.K.Kartha, Vice Chairman, the third Member, the case is disposed of with the following orders:

The impugned memorandum dated 12.4.88 (Annexure-IV) and 20.6.88 (Annexure-I) are set aside and quashed and the case is remanded to the 2nd respondent who may initiate

disciplinary proceedings against the applicant, if he so chooses, in accordance with law in the light of the observations made in the judgement of Hon'ble Shri P.K. Kartha. It is also made clear that any amount recovered from the applicant should be refunded to him forthwith.

3. The O.A. is disposed of with the aforesaid orders and directions.

(N. Dharmadan) 7.12.90
Judicial Member

(N.V.Krishnan) 7.12.90
Admve. Member

7.12.90