

FINAL ORDER
19.2.1988

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

OA No.71/87

A.Aboobackerkutty : Applicant

Vs

Divisional Engineer
Telegraphs, : Respondent
Ernakulam & 3 others

M/s MK Damodaran/PV Mohanan/
VK Mohanan/Johnny Sebastain : Counsel for Applicant

Mr K.Karthikeya Panicker, : Counsel for Respondent
ACGSC

CORAM

Hon'ble Shri S.P.Mukerji, Administrative Member

&

Hon'ble Shri G.Sreedharan Nair, Judicial Member
(Order pronounced by Hon'ble Shri G.Sreedharan Nair,
Judicial Member)

ORDER

The applicant while working as technician in the office of the Telephone Exchange, Always was proceeded against under rule 14 of the CCS(CCA) Rules, 1965 for failure to maintain devotion to duty and for acting in a manner unbecoming of a government servant as he absented himself unauthorisedly from 8.9.1982. An enquiry was conducted as a result of which by the order dated 2.4.1986, the charge was found proved and the applicant was removed from service. This order is assailed in this application. The grounds urged are that before

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conducting the enquiry, no notice was issued to the applicant and that the penalty was imposed without giving an opportunity to the applicant to say anything about it. It is alleged that the impugned order has been issued in violation of the principles of natural justice. According to the applicant, he had applied for leave on medical ground with effect from 8.9.1982 to 7.3.1986. Since the applications for leave submitted by him from 12.11.1981 to 7.9.1982 were sanctioned, he was under the impression that the leave application for the subsequent period were also sanctioned. It was only when he reported for duty in March 1986 that he came to know about the impugned order. It is urged that the penalty imposed is disproportionate to the gravity of the charge.

2. In the reply filed on behalf of the respondent it is contended that the application is not maintainable as the applicant has not preferred appeal against the impugned order as provided in the Service Rules. It is admitted that the applicant had availed leave on medical ground during the period from 12.11.1981 to 7.9.1982. When further applications for leave were received, the Department, ^{on} ~~of~~ Investigation understood that the applicant had left the country, ~~sending~~ ^{The} leave applications related to the period from 8.9.1981

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to 31.8.1983. Beyond that date no leave application was received. The applicant was actually sanctioned leave only upto 8.9.1982. The enquiry against the applicant was conducted in accordance with the provisions of the rules. All the communications sent to the applicant were returned unserved with ¹¹²endorsements "Addressee left India", or "Refused". Since notice was given to the applicant at every stage of the enquiry by sending the notice to his last known address, he cannot complain that no opportunity was granted to defend himself. According to the rules, before the imposition of the penalty, a government servant is not entitled to notice regarding the proposed penalty. It is stated that as the applicant remained continuously absent from duty, he deserved a penalty of dismissal from service, but the penalty of removal was imposed, taking a lenient view of the matter.

3. It ~~is false~~ to be decided as to whether the order dated 2.4.1986 by which the penalty of removal from ~~the~~ service of the applicant ^{was imposed} is sustainable.

4. ^A ~~The~~ preliminary objection has been raised on behalf of the respondents that the application is not maintainable since it has been ^{filed} ~~found~~ without pursuing the remedy of appeal. No doubt, under Section 20 of the

Administrative Tribunals Act the Tribunal shall not ordinarily admit an application unless the applicant has exhausted ^{the} remedies available to him as per the Service Rule. However, that does not mean that an application which has been admitted by the Tribunal and which has been heard finally is to be rejected on the short ground that the applicant has not pursued the remedy of appeal before the appellate authority. We over rule the preliminary objection.

5. The solitary ground that was urged by Advocate Shri P.V.Mohanan, appearing on behalf of the applicant was that the penalty has been imposed in violation of the principles of the natural justice as no opportunity was afforded to the applicant for defending himself. On an examination of the file relating to the enquiry made ~~is~~ available by the Central Government Standing Counsel, we are unable to agree with counsel of the applicant.

6. This is a case where admittedly the applicant had not attended duty from 12.11.1981. He had availed leave on medical ground for a period of ^{about} 300 days in 8 spells during the period from 12.11.1981 to 7.9.1982 and had exhausted all eligible leave. Thereafter, for the period from 8.9.1982 to 31.8.1983 applications for leave in 5 different spells were submitted. Since

The applicant had been continuously absent, investigation was conducted by the department and according to the respondents, it was revealed that the applicant had left the country. The applications for leave during the period from 8.9.1982 to 31.8.1983 were not sanctioned. After 31.8.1983, though the applicant would ~~allege that~~ he had applied for leave, according to the respondents, there was no such application. It is significant to note that even after the reply of the respondents, the applicant has not cared to state as to when the applications were submitted or to produce any material to substantiate the averment. Admittedly the leave applications during the period ending 7.9.1982 were directly submitted before the third respondent. Even according to the applicant it was only in March 1986 that he reported for duty. When there was no intimation to him that the leave applied for during the period from 8.9.1982 to 31.8.1983 was sanctioned ~~before hand~~ ^{it behaved}, the applicant ~~was~~ to find out the actual position. A government servant cannot claim any kind of leave as a matter of right; it has to be sanctioned by the competent authority. _____

_____ Mere submission of the leave application will not enable a government servant to abstain from reporting for duty. Even after the leave applied ~~for~~ during the period from 8.9.1982 to 31.8.1983 was rejected by the competent authority, the applicant did not report for

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duty. As stated earlier, there is no material on record to establish that for the subsequent period till his reporting for duty in March 1986 even an application for leave was submitted.


7. It was in the circumstances mentioned in the preceding paragraphs that proceedings were initiated against the applicant by issue of memorandum of charge for violation to maintain devotion to duty and acting in a manner unbecoming of a government servant. The memorandum of charge was sent to the applicant in the address which he had reported, but it was returned with the endorsement of refusal. The enquiry officer had also issued notice to the applicant regarding the preliminary sitting fixed on 6.2.1986. That notice also was returned with the same endorsement. ^A ~~The~~ fresh sitting was proposed to be held on 24.2.1986 and the notice to the applicant in that behalf also ^{not with} ~~made that~~ the same fate. ~~The~~ enquiry officer gave another opportunity and caused the issue of another notice. Even then the applicant did not care to accept the notice. It was in the above circumstances that the enquiry officer held the enquiry ex parte. He could not be faulted for doing so since Sub Rule (20) of Rule 14 of the CCS(CCA) Rules, 1965 enables him to do so. It was after the examination of the Sub Divisional Officer

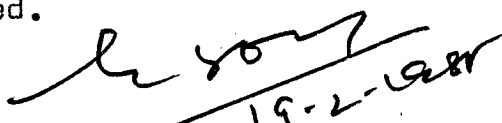
and perusal of the entries in the Service Book of the applicant that the conclusion ^{that the charge} ~~of the authorities~~ against the applicant ^{is} ~~was~~ proved was arrived at. It cannot at all be said that the enquiry was not conducted in accordance with the rules or that there has been violation of the principles of natural justice.

8. It is urged in the application that before the imposition of the penalty, a notice regarding the proposed penalty should have been issued. There is no substance in the attack, for Sub Rule(4) of Rule 15 of the Rules specifically provides that it shall not be necessary to give the government servant any opportunity of making representation on the penalty proposed to be imposed.

9. It was submitted by the counsel of the applicant that in any event the penalty that has been imposed is disproportionate to the gravity of the charge. We do not agree. This is ^a ~~the~~ case where for a continuous period of 4 years the applicant ^{willfully and consciously} ~~absented~~ himself from duty. As such it cannot be said that the penalty of removal from service is so disproportionate as to warrant interference.

10. The application is dismissed.


(S.P. Mukerji)
Admv. Member
19.2.1988


(G. Sreedharan Nair)
Judicial Member
19.2.1988

Index: ~~Yes~~/No

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