

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 08 of 2011

Tuesday, this the 11th day of September, 2012

CORAM:

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

Mohammed Ansari P.K.,
S/o. Late P.H. Kunhu Mohammed,
TC 26/942, Pulikkalakath,
96, Chempaka Nagar, Ootukuzhy,
Thiruvananthapuram – 1

... Applicant.

(By Advocate Mr. P.K. Ibrahim)

v e r s u s

1. The Chief Commercial Manager,
Southern Railways, Zonal Office, Madras.
2. The Senior Divisional Personnel Officer,
Southern Railways Divisional Office,
Personnel Branch, Palakkad.
3. The Station Master,
Cannanore Railway Station, Cannanore

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

This application having been heard on 04.09.2012, the Tribunal on 11.09.12 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant, who was Senior Commercial Commercial Clerk in the Kannur Railway Station, was charge sheeted for unauthorised absence from 19.08.1999 onwards vide memo dated 26.04.2000 under Rule 9 of the Railway Servant (Discipline and Appeal) Rules, 1968. After conducting an enquiry, the enquiry report finding the applicant guilty of absence was

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forwarded to him and the same was received by him. But the penalty advice removing him from service from the date of the receipt by the applicant was not served upon him. The penalty advice was deemed to have been served on him on 21.10.2002. The applicant came to know about the termination of his service only when he enquired at the office for getting a posting order in the year 2009. A true copy of the penalty advice dated 03.09.2002 obtained under the RTI Act is produced at Annexure A-9. Aggrieved by the said order, the applicant has filed this OA for the following reliefs:

- (i) To call for the records leading to Annexure A-9 and quash the same;
- (ii) To declare that the applicant is entitled to reinstatement in service with back wages;
- (iii) To declare that the applicant is not liable to be removed from service alleging absence from duty in as much as he has been genuinely suffering from chronic psoriasis disease and that he is entitled to sick leave for the period of his treatment; and
- (iv) pass such other order or direction as may be deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant contended that Annexure A-9 order is violative of principles of natural justice and the procedure prescribed for disciplinary action. The applicant is deprived of his statutory remedy to appeal by not serving a copy of the penalty advice. As the order of termination of service has not been served on him, it has not come into effect. The respondents have no case that he remained absent without sufficient cause and that the plea of sickness put forward by him is false. According to the Railway rules, unless the order is communicated the order for termination does not take effect. The applicant was absent from duty on genuine medical ground. No



notice was given to him for unauthorised absence calling upon him to rejoin duty. He had attended the enquiry while undergoing ayurvedic treatment. He had applied for sick leave and had sent telegram to the respondents informing them of his illness with medical certificates. The proceedings of the enquiry officer testifies the fact that he was actually suffering from chronic psoriasis disease.

3. Per contra, the respondents contended that the receipts of telegram sent on 18.08.1999 from Trivandrum submitted by the applicant do not show any evidence as to whom the telegram was sent. The applicant had not produced proof for having sent private medical certificates to the DPO/PGT on 20.08.1999 and 20.02.2000. The applicant was absent for 511 days from 19.08.1999 to 10.01.2001 (the date of enquiry). The applicant had not ascertained in person as to the action taken on his telegram. A copy of the enquiry report and enquiry proceedings were sent to the applicant by registered post on 13.12.2001 and the same was delivered to the applicant on 24.12.2001. The penalty advice sent by registered post to the applicant on 13.12.2001 was returned with unclear remarks on 19.10.2002. Therefore, a copy of the penalty advice was pasted in the booking office, Kannur, where the applicant last worked, on 21.10.2002 in the presence of 2 witnesses. The applicant is not entitled for reinstatement. There is no arbitrariness or violation of principles of natural justice. That the enquiry officer as well as the witnesses were aware of his illness will not alter the fact that he was authorisedly absent.

4. In the rejoinder statement, the applicant submitted that the respondents



are fully aware of the address of the applicant. The name of the place of residence of the applicant is Oottukuzhy and not 'Oottukulmy'. Even in Annexure R-1 acknowledgement produced by the respondents, the name of the place of residence was written as Oottukuzhy after making an overwriting on 'kulmy'. The unnoticeable mistakes in the address of the addressee in the acknowledgement card will not stand proof for service of the registered post if in the postal cover the address is written correctly to identify the place. The applicant has not received any letter addressed to him in the postal cover showing the place of residence as Oottukulmy. There is no case that any communication addressed to the applicant at his place of residence "Oottukuzhy" was returned unclaimed or refused. The applicant has got no case that the enquiry report and enquiry proceedings were not sent to him and that he has not received the same. The applicant's case is that nothing further was heard from the department. The applicant requested for reinstatement in service after he became medically fit to rejoin duty.

5. We have heard Mr. P.K. Ibrahim, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and perused the records.

6. All the grounds raised by the applicant in this O.A. deserve consideration in the first instance by the Appellate Authority. At this stage, we are not inclined to go into the merits of the case of the applicant. The applicant has to exhaust all the remedies available to him under the service rules before approaching this Tribunal for redressal of grievance, as per Rule 20 of the Administrative Tribunals Act, 1985. The applicant is unable to file



an appeal against the order of his removal from service as he has not been served with the penalty advice. The applicant is having a copy of the penalty advice obtained under the RTI Act. We direct the applicant to deem the copy of the penalty advice received by him under the RTI Act as the penalty advice served upon him as per rules on the date of receipt of a copy of this order. On this basis, he should file an appeal before the Appellate Authority, who in turn should dispose of the same by a speaking order after duly considering all grounds raised by the applicant within 60 days of the receipt of the appeal.

7. The O.A. is disposed of as above with no order as to costs.

(Dated, the 11th September, 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.