

Central Administrative Tribunal
Ernakulam Bench

Date of decision: 7.3.1990

Present

Hon'ble Shri NV Krishnan, Administrative Member
And

Hon'ble Shri N Dharmadan, Judicial Member

OA 95/89

K Padmanabhan

: Applicant

vs

1. Union of India, rep. by
the Director General,
Dept't. of Telecommunications,
New Delhi.

: Respondents

2. Sub Divisional Officer
Telegraphs, Kasargode

M/s K Ramakumar, VR Ramachandran Nair : Counsel for
and Roy Abraham applicant

Mr. PS Biju, ACGSC : Counsel for
respondents

ORDER

(Shri NV Krishnan, Administrative Member)

The applicant who is working as a Technician in
the Department of Telecommunications under Respondent-2
is aggrieved by the directions given to him by Respondent-2
on 7.9.88 (Annexure A) that if he failed to submit an
application for leave for the period from 15.2.88 to 6.3.88,
the said period will be treated as "dies non" with break in
service as also by the subsequent order dated 18.11.88.
(Annexure C) by which the said period was merely treated
as "dies non" without, however, prejudice to any other
disciplinary action that might be taken against the
official.

2. The impugned orders were issued following an agitation
resorted to by the applicant and his other colleagues who

were members of the Bharatiya Telecommunication Technicians' Union affiliated to the BTEF, a federation functioning at the All India level. This matter is referred to in the application in the following terms:

"In support of certain urgent demands of the workmen represented by the aforesaid Union, its members resorted to certain action. There was, however, no strike or absence from duty. All the members including the applicant were present on duty even during the period of agitation."

3. The direction at Annexure-A specifically states that the applicant was on strike during that period. In Annexure-C, it is stated that the applicant had resorted "complete tool down strike/non cooperation and refused to perform duty assigned to him which resulted in that cessation of work". The applicant's contention is/this being an All India matter, it had been discussed at ~~in~~ the national level. He also points out that the High Court of Madras had already stayed the proposal to cut the salary in respect of employees working in Tamilnadu. Even though this fact was brought to the notice of Respondent-2 and he was requested to reconsider his order at Annexure-C, nothing has been done in that matter.

4. The applicant's grievance is ~~in~~ two fold:

(a) he alleges that Respondent-2 is not competent to issue the direction contained in Annexure-A.

(b) the order at Annexure-C has been issued without compliance of the principles of natural justice.

5. We have seen the ~~re~~ply affidavit which states that though the applicant was present from 15.2.88 to 6.3.88 as stated by him, he did not perform the duties assigned to him and thus struck work alongwith others. Hence,

he was given the Annexure A notice to apply for leave, order and when this was not done, Respondent-2 issued/at Annexure-C treating the period as 'dies-non'.

6. We have perused the records of the case and heard the counsel on both sides. It is not the case of the applicant that though he was not only present, but also performed the duties assigned to him during the period from 15.2.88 to 6.3.88, the period has still been treated as 'dies-non'. In fact, in para 4.1 of the application he has studiously omitted to mention whether, while being present, he also discharged the duties assigned to him. On the contrary, in the ground-C of the application, he states that he is entitled to protest in support of certain demands raised by the Union to which he belongs. It is clear that, according to him, he had a right not to perform duty, though present in the office; and that this was a form of protest. Under these circumstances the employer is entitled and justified to take appropriate action against the employee, like treating it as dies-non.

7. A careful reading of Annexure A would show that Respondent-2 had received instructions that the Directorate had decided to hold in abeyance the disciplinary proceedings as well as action under FR 17A, which states that the unauthorised absence mentioned therein shall be deemed to cause interruption or break in service. Similarly, under Rule 11 of the Central Civil Service (CC&A) Rules, 1965 which deals with penalties

there is an instruction from the Government of India about the conducting disciplinary proceedings in such circumstances. The Annexure A letter clarifies that instructions had been received not to take such action but to apply the principle of 'no work, no pay' to the period of this absence. However, it would appear that a further decision was taken that the period of unauthorised absence could ^{even} be regulated even as leave due in case the concerned employees applied for such leave. It is in pursuance of this decision that the Annexure A letter was issued by Respondent-2 who admittedly is the authority competent to sanction leave to the applicant. It is true that the direction at Annexure A also contains a warning that if the applicant did not apply for leave, the period of absence will not only be treated as 'does-not' but also result break in service.

8 If the applicant felt that Respondent-2 was not competent to issue such a warning or act upon it, he could not simply ignore the matter. He ought to have filed a reply. Not having done so, he cannot complain that natural justice has been denied to him. The issue of Annexure A letter gave him an opportunity to make all submissions to Respondent-2. in the same manner, he has made submissions in the present application.

9 The effective order is only Annexure-C which alone decides the issue as to how the period of unauthorised

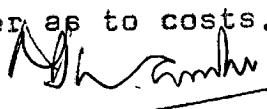
absence is to be treated. The learned counsel for the applicant did not contest that Respondent-2 was not competent to pass the order at Annexure-C. Admittedly, Respondent-2 is the authority competent to sanction leave to the applicant and hence under Rules 62 of the Posts & Telegraphs Manual such an order can be passed by the leave sanctioning authority.

10. The order at Annexure-C clearly states that the period in question has been treated only as 'dies-non'.

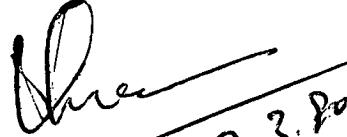
It does not proceed further to state that this would amount to a break in service for which purpose alone disciplinary action as provided for in the instructions issued by the Government of India under Rule 11 of the CCS(CC&A) Rules will have to be followed.

11. The applicant cannot complain of the treatment meted out to him which is a consequence of his own action or inaction. For, though he was given a reasonable opportunity of getting the period treated as such leave as may be due to him, he willfully did not avail himself of that opportunity. In the circumstance, we are satisfied that this is a case where the applicant's conduct merited ^{the} His being treated as absent unauthorisedly and/further treatment of 'dies-non' given to this period is fully in accordance with the rules on the subject.

12. In the circumstances, we find no substance in this application and it is dismissed. There will be no order as to costs.


(N.Dharmadan)
Judicial Member

7.3.80


(N.V.Krishnan)
Administrative Member