

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 113 of 2008

Friday, this the 6th day of March, 2009

CORAM:

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

P. Balakrishnan (No.3)
Clerk/Typist, Office of the A.G. (A&E),
Kerala Br., Thrissur,
Now residing at 7/335, "Mummy Dady",
Near Government Hospital,
Choondupalaka, P.O. Kattakkada,
Thiruvananthapuram District.

... Applicant.

(By Advocate Mr. K.K. Mohammed Ravuf)

v e r s u s

1. The Accountant General (A&E),
Appellate Authority Kerala,
Thiruvananthapuram.
2. The Senior Dy. Accountant General (Admn.),
Office of the Accountant General (A&E),
Kerala, Thiruvananthapuram.
3. C.V. Susanna,
Senior Accounts Officer,
C/o. Accountant General (A&E),
Thrissur.
4. The Union of India, represented by
Secretary, Ministry of Finance,
Central Secretariat, New Delhi.

... Respondents.

(By Advocate Mr. C.M. Nazar, ACGSC (1,2&4))



(The Original Application having been heard on 24.02.09, this Tribunal on 26.3.09. delivered the following) :


O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant has filed the O.A. with an application for condonation of delay of 1015 days. The reason given was that the file was misplaced by him and he could not locate the same. The delay was not, according to the applicant caused due to wilful negligence. Thus he has prayed for condonation of delay.


2. Respondents have contended that there is in fact 1692 days of delay in filing the original application, as the appeal was disposed on 27th June 2003 and the OA had been filed on 15th February, 2008. The reasons attributed for the delay is not justifiable. Hence, the OA is liable to be dismissed on the grounds of delay itself.

3. On consideration of the M.A. for condonation, the Tribunal vide its order dated 18th November 2008 condoned the delay and thus, the case is now decided on merits.

4. The case of the applicant is that he has been functioning as a clerk/typist in the office of the Accountant General (A & E), Thrissur, and in 1997, on account of certain disease (Deep Vein Thrombosis) he was



having treatment first in one hospital (Elite Mission Hospital, Trissur), later followed by some other hospitals at Trissur. Lastly, he was referred to one Sree Chitra Thirunal Institute for Medical Sciences and Technology, Trivandrum where he was treated for 2 weeks as inpatient. Due to his prolonged absence, the respondents had referred his case to a medical board constituted on 17th February 2000 but as the said communication reached only in the afternoon of that date, when the applicant visited the Hospital concerned, he was informed that the Medical Board which sat in the morning had risen. Later on the applicant appeared before the Board on 23rd March 2000 which issued a certificate to the effect that in the opinion of the Medical Board, the evidence of Deep Vein Thrombosis of both lower limbs were present. The applicant again appeared before the Medical Board on 20th July 2000 and it was opined that the applicant was temporarily unfit to join duty till the patency of the Deep Vein Thrombosis is checked by Dopler Study and opined review after three months. The applicant had to be away on medical leave from 25th March 2002 onwards too and this time was also he was referred to a Medical Board which issued the applicant a certificate on 17th June 2002. However, when the applicant preferred his application for leave, he was not sanctioned the same, instead he was proceeded with for alleged misconduct of alleged unauthorised absence from duty. The charge reads as under:-



"The said Shri P. Balakrishnan (No. 3) while functioning as clerk/Typist at the Branch Office, Thrissur of the Accountant General (A&E) Kerala absented himself from duty from 1-10-1997 onwards violating the provisions of para 3.2 of the Manual of General Procedure of the office and thus showed lack of devotion to duty and behaved in a manner unbecoming of a Government Servant and thereby violated the provisions of Rule 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

5. According to the applicant, inquiry conducted by the respondents was 'a make believe' enquiry without considering the medical certificates issued by qualified medical practitioners and by the Medical Board' and the inquiry officer arrived at a finding that the charge is partially proved. Copy of the Inquiry report was filed and the applicant furnished his representation against the same. The disciplinary authority had considered the inquiry report as well as the representation and held that the charge having been partially proved, and the representation of the applicant not being convincing, imposed the penalty of reduction to the lower stage of pay of Rs 3050/- in the scale of Rs 3050-75-3950-80-4590 for a period of 3 years with the consequence of his not earning increments during the said period of 3 years and on the expiry of the period of reduction, the reduction will have the effect of postponing the future increments of his pay.

6. Appeal filed by the applicant before the appellate authority did not yield any fruitful result. Hence this O.A.



7. Respondents have contested the O.A. According to them, the penalty imposed was commensurate with the nature and degree of misconduct and hence, prayed for dismissal of the O.A.

8. The applicant has filed his rejoinder to the counter filed by the respondents.

9. Counsel for the applicant invited the attention of the Tribunal to the enquiry report, especially to the following items:-

- (a) PE4, PE 6, PE 7, PE 8, PE 11, PE 12 and PE 13 are the leave applications which are supported with medical certificates for the various spell of leave from 01-10-97 to 3-12-99 except 10-9-98 to 8-11-98. (Para 6 of the report)
- (b) Since the CO was unauthorisedly absented from duty from 1-10-97 onwards a memo was issued on 12-2-98 and later telegrams were issued on 20-4-98 and 5-6-98 directing the C.O. to report for duty. The C.O. did not respond to those communications. However, the C.O. submitted two leave applications covering the period from 1-10-97 to 27-7-98 with medical certificate on 15-6-98. The C.O. continued to be absented from duty by applying for EOL on medical grounds upto 3-12-99. (Para 8 of the Report)
- (c) The intimations to the C.O. to appear before Medical Board (ISM) on 21-12-98 could be issued by the department only on 21-12-98. It is very likely that the intimation did not reach the C.O. on time. Hence, the C.O. cannot be blamed for not appearing himself before Medical Board on 21-12-98. (Para 8(2) of the report.)
- (d) The Medical Board examined the C.O. on 23-3-2000 and issued a certificate indicating that evidence of Deep Vein

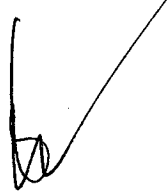


Thrombosis of both lower limbs presents, temporarily unfit to join duty for a period of 3-4 months from 23-3-2000. As the certificate of Medical Board cannot be disputed by the department the reason for the absence of the C.O. has to be considered as genuine. (Para 8 (4) of the report)

- (e) The applications for leave were on medical grounds duly supported with medical certificates. Generally leave on medical grounds supported with medical certificate are not applied for in advance. However, such leave applications are either sanctioned or the official referred to for second medical examination by the Medical Board. In the case of the C.O. the department did not sanction leave or take action at the appropriate time to refer the C.O. for second medical examination during the period of absence from 15-6-98 to 3-12-99. As such there is no reason to consider absence of the C.O. during the above period as unjustified and unauthorised. (Para 9 of the report)

10. The counsel for the applicant also contended that the officer who had imposed the punishment (i.e. the second respondent is a witness to the enquiry as the orders passed by him is also to be proved as the Memorandum of allegation rests on his orders as well. Thus, a person who is a prosecution witness has now acted as his own judge too.

11. The counsel also argued that the mandatory requirement of complying with the provisions of Rule 14(18) of the CCS (CC & A) Rules, 1965 has not been fulfilled and this is a serious error. To substantiate, the counsel relied upon the decision of the Apex Court in the case of **Moni Shankar vs Union of India and others, (2008) 3 SCC 484.**




12. Counsel for the respondents argued that the case is pure and simple. The applicant failed to cooperate in the enquiry which had to be conducted ex parte. All the procedures have been followed. The Disciplinary authority had taken into account the report and the representation and after due application of mind imposed the penalty which is commensurate with the gravity of the charges. Likewise, the appellate authority also had dealt with the appeal and dismissed the same.

13. Arguments were heard and documents perused. The charge is that the applicant had violated the provisions of paragraph 3.2 of the Manual of General Procedure of the Office and had shown lack of devotion to duty and behaved in a manner unbecoming of a Government servant and thereby violated the provisions of Rule 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules.

14. The Inquiry Officer has stated in his report as under:-

"Under para 3-02 of the Manual of General Procedures of the office any member of staff staying away from duty without leave duly sanctioned is liable to disciplinary action unless such action is justified and the extension of leave should normally applied for at least 10 days in advance of the date of expiry of leave sanctioned. Shri P. Balakrishnan, C/T had not submitted the leave application immediately on entering on leave from 1-10-97 onwards and remained absented from duty during the period from 1-10-97 to 14-6-98 and from 4-12-99 to 24-4-2000, which is




a clear violation of the provisions of paragraph 3-02 of the Manual of General Procedure of the office and thus showed lack of devotion to duty and behaved in a manner unbecoming of a Government servant and thereby violated the provisions of Rule 3(1)(ii) and 3(1)(iii) of the Central Civil Services C(Conduct) Rules."

15. After so holding, the Inquiry Officer has in the very same paragraph states as under:-

"The applications for leave were on medical grounds duly supported with medical certificates. Generally leave on medical grounds supported with medical certificate are not applied for in advance. However, such leave applications are either sanctioned or the official referred to for second medical examination by the Medical Board. In the case of the C.O. the department did not sanction leave or take action at the appropriate time to refer the C.O. for second medical examination during the period of absence from 15-6-98 to 3-12-99. As such there is no reason to consider absence of the C.O. during the above period as unjustified and unauthorised."

16. The above two would go to show that the inquiry officer has on the one hand held that the applicant had been guilty of misconduct and on the other he has also stated that the reason for the absence of the applicant was genuine and the authorities have not taken ^{action} promptly and as such there is no reason to consider the absence of the C.O. during the above period as unjustified and unauthorised. This conflicting view renders the very inquiry report as 'perverse'.



17. There is substance in the contention of the counsel for the applicant that Rule 14(18) of the CCS (CC & A) Rules, 1965 has not been complied with and the same is a serious error to vitiate the inquiry.

Rule 14(18) reads as under:-

"(18) The Inquiry Authority may, after the Government servant closes his case, and shall if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidences for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

18. The above provision holds good irrespective of there by any deposition of witnesses/examination of witnesses or otherwise.

19. Though the inquiry was proceeded ex parte, after closure of the Prosecution case, the charged officer has to be given opportunity to rebut the same. The inquiry report does not indicate that such an opportunity has been given to the applicant. This is a serious error, as held by the Tribunal in the case of one S.B. Ramesh, which has been upheld by the Apex Court, vide **Ministry of Finance v. S.B. Ramesh, (1998) 3 SCC 227**, where the Apex Court extracted inter alia the following from the Judgment of the Tribunal and ultimately held that the Apex Court would not interfere with the decision of the Tribunal:

"..... even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the



applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority."

20. *Pari materia* with the provisions of Rule 14(18) of the CCS (CC&A) Rule is the provision of 9(21) of the Railway Servants (Discipline and Appeal) Rules 1968, which reads as under:-

"(21) The Inquiry Authority may, after the Railway servant closes his case, and shall if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidences for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him."

21. In *Moni Shankar v. Union of India*, (2008) 3 SCC 484, the Apex Court has considered the effect of omission to comply with the above provision and held as under:-

"28. The High Court also committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied the said opportunity."

22. The cumulative effect of the above errors on the part of the Inquiry report, makes the enquiry report as illegal and hence unsustainable in



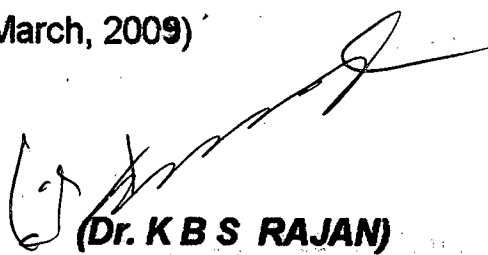
law. And, needless to mention that any order of penalty, based on the aforesaid inquiry report would also have to be held equally bad in law.

23. In view of the above, the **O.A. is allowed**. It is declared that Annexure A-11 the penalty order and A-13, the Appellate orders are hereby quashed and set aside. Consequently, any reduction in pay of the applicant shall have to be reviewed and his pay fixed as if no penalty has been imposed. The arrears of pay and allowances shall be paid to the applicant, of course, without any interest. Necessary orders shall be passed by the competent authority with reference to leave of the applicant on medical grounds to the extent leave was available at the credit of the applicant and the balance period shall be treated as per law and arrears due to the applicant paid within a period of six months from the date of communication of this order.

24. No costs.

(Dated, the 6th March, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.