

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 127/92
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XDOX

DATE OF DECISION 29.9.1992

N.Ramankutty Nair Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

The Divisional Engineer, Respondent (s)
Telecom, Thodupuzha & 3 others.

Mr.T.P.M.Ibrahim Khan, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **S.P.Mukerji, Vice Chairman**

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

MR. N.DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by Annexures-I & II orders passed by the disciplinary authority and the appellate authority in the disciplinary proceedings initiated against him for his unauthorised absence from duty for different periods shown in the charge memo while working as Telephone Operator at Trunk Exchange, Kumaly.

2. The charge memo No. Q.1459/11/283 dated 5.3.86 served on the applicant contained the following charges:-

"Article-I

That the said Shri N.Ramankutty Nair, Telephone Operator while working as T.O. at Trunk Exchange, Kumily has remained absent unauthorisedly from duty for different periods shown below:

1. 10.4.82 to 8.5.82
2. 9.6.82 to 22.7.82
3. 17.8.83 to 12.2.84
4. 9.12.84 to 5.2.85
5. 6.6.85 to till date

Thus Shri N.Ramankutty Nair has showed lack of devotion to duty, failed to maintain absolute integrity and has acted in a manner unbecoming of a Government servant thereby violating Rule 3 I (i), 3 I (ii) and 3 I (iii) of CCS Conduct Rules 1964.

Article - 2:

That the said Shri N.Ramankutty Nair, Telephone Operator did not appear before D.M.O. Quilon for the 2nd medical opinion as per the direction of the S.D.O.T. Idukki and has not given any intimation regarding his failure to appear before D.M.O.Quilon. Thus Shri N.Ramankutty Nair has acted in a manner quite unbecoming of a Government servant violating rule 3 I (iii) of CCS Conduct Rules 1964.

Article - 3:

That the said Shri N.Ramankutty Nair, Telephone Operator has not reported for duty at Trunk exchange Muvattupuzha as per the direction of the undersigned. Thus Shri Ramankutty Nair showed lack of devotion to duty, failed to maintain absolute integrity and acted in a manner quite unbecoming of a Government servant violating Rule 3 I(i), 3 I (ii) and Rule 3 I (iii) of CCS Conduct Rules 1964."

The applicant denied the charges. Hence an Inquiry Officer was appointed. According to the applicant the enquiry proceedings were held ex-parte on 21.12.87. When he received copy of the sitting he submitted Annexure-III letter dated 2.1.1988 before the enquiry authority for setting aside the ex-parte order and conducting a fresh enquiry giving an opportunity to defend the charges. After rejecting the same the disciplinary authority passed Annexure-I proceedings dated 2.5.89 imposing the punishment of removal from service with immediate effect. The applicant filed Annexure-V memorandum of appeal before the Appellate Authority which was disposed of by Annexure-II order dated 27.12.1991 confirming the penalty of removal from service imposed by the disciplinary authority against the applicant. The applicant seeks to quash Annexures-I & II and prays for a declaration that he

continues in service with all consequential benefits.

3. Larned counsel for the applicant Shri M.R.Rajendran Nair urged two points based on principles of natural justice (i) the Inquiry Officer while holding the ex-party enquiry failed to follow the procedural formalities provided under rule 14 (11) of CCS (CCA) Rules, 1965, & (ii) the enquiry report was not furnished to the applicant by the disciplinary authority before imposing the punishment. Hence the entire proceedings are vitiated and violative of principles of natural justice.

4. The respondents explained the circumstances under which the disciplinary proceedings were initiated against the applicant. According to them the main charge against the applicant was that while working as Telephone Operator Kumily he absented himself from duty unauthorisedly for various spells as stated in the memo of charges. Kumily being an important remote place the Telephone Operator has a vital role in the matter of maintaining communication facilities with other areas. The applicant had chosen to absent himself on various occasions without prior permission which resulted in dislocation of communication facilities. Hence he was transferred out of Kumily. The medical certificates produced by the applicant disclosed that he was suffering from rheumatic complaints but the applicant used to absent from duty without any permission from his controlling officer on the ground that he has some serious mental problem. Since the stand taken by the applicant is contrary to the certificates produced by him his controlling superiors directed him to appear Before the D.M.O. Quilon for a second medical opinion as per letter No.Q.83/162 dated 16.9.1982. But the

applicant did not report before the D.M.O. till 23.11.1982. From this it was presumed that the applicant has no serious mental problem. His wife is a Government servant and she knows the procedural formalities of submitting application for leave with supporting documents. If the applicant had any genuine problem of health and he bonafide required leave he should have appeared before the D.M.O. Quilon pursuant to the direction of the superior controlling officer. Under these circumstances the respondents were forced to initiate disciplinary action by issuing the memo of charges. Though the applicant denied the charges in the enquiry before the Inquiry Officer he did not cooperate with the enquiry. Hence the Inquiry Officer was compelled to conduct ex-parte enquiry and submit the report. The findings of the Inquiry Officer was accepted by the Disciplinary Authority and he was punished. The Appellate Authority also confirmed the order of the Disciplinary Authority.

5. It is clear from a reading of Annexure-I proceedings of the disciplinary authority that the applicant did not set up a defence that he submitted leave applications for all the days of which he absented himself and thereby contended that the charge against him is false and that the absence from duty should not be treated as unauthorised absence. He has no case that during the spell of absence from 10.4.82 to 8.5.82 he submitted leave application and verified whether the same has been sanctioned. It is a duty cast upon the Government servant who applies for leave to verify whether the same has been sanctioned by the competent authority and if it is not sanctioned he has got a further duty to report for duty at least after the expiry of the period covered by the leave application. The next spell of absence

from 9.6.82 to 22.7.82 is admittedly unauthorised absence. Same reasoning can be applied in regard to his absence from duty for further spells of time shown in the memo of charges.

6. It can also be seen from a perusal of the impugned order Annexure-I that the applicant was not cooperating in the enquiry. In fact he was adopting some dilatory tactics in order to delay the enquiry and avoid participating in the same. The first sitting was notified for 28.11.86. But it was postponed to be held on 5.1.1987 at the request of the applicant. Finally it was held only on 2nd February 1987. In that sitting the applicant was present but the presenting officer requested for few more days for producing documents. The next sitting was held on 11.5.1987 after postponing the dates fixed xxxxx namely 28.3.87 and 20.4.87, at the request of the applicant. In that sitting the applicant denied the charges and nominated Shri T.S.Gopalakrishnan, T.S. Quilon as his defence assistant. On that day the Inquiry Officer specifically directed that the postponement of the enquiry will be considered only on genuine grounds supported by medical certificates. On the next sitting neither the applicant nor the AGS nominated by the SPS attended the enquiry. No request was also submitted for adjournment. However, the enquiry was further held on 29.6.87, 20.7.87, 24.8.87 and 30.11.87 after serving proper notices on the applicant. Thereafter on 21.12.87 the enquiry was conducted ex-parte because of the failure of the applicant to cooperate with the enquiry. Notice regarding posting of the case on 21.12.87 was sent to the applicant sufficiently in advance. But it was returned by the postal authorities with the remark on the cover "Noticed on 17.12.87. Deposit for 7 days". It is

clear from the endorsement that the applicant was informed of the letter and kept it with the postal authorities for enabling him to take delivery of the same within a period of seven days but the applicant did not claim the same in spite of his information.

7. On 21.12.87 the Inquiry Officer conducted the enquiry, the minutes of which is Annexure-IV. Annexure-IV is extracted below:-

"Date : 21.12.1987
Time : 12.00 hrs.

The following were present:

1) Shri Jose Thomas Presenting Officer.

The sitting started at 12.00 hours. Sri N.Ramankutty Nair SPS and Sri K.Gopalakrishnan AGS did not turn up from the Inquiry, though notices were sent to them stating the inquiry fails will be held Ex-parte in case they turn out for the sitting.

Hence the Presenting Officer is asked to present the case ex-parte. The documents were verified and were allotted Nos. as detailed below:

D1 - SDOt Idikki letter No.Q.83 Dt. 25.10.83.

D2 - SDOt Idikki letter No.Q.83/162 dt. 16.4.84, with AD.

D3 - DET, TDP No.E.2/Tfr/219 dated TDP 18.11.85

D4 - SDOt Idikki letter No.E.9/Idk/83-84/16 dt. at Painavu the 24.5.85.

D5 - DET, TDP Letter No.1469/II/278 dt. TDP 9.8.85 - with receipt of Post Office No.1950 dt. 12.8.85.

D6 - DE TDP No.Q.1419/11/279 dt. at TDP 12.5.85 by XT/1515/13 at TDP Post Office.

All the original documents D1-D6 were taken under the custody of the Inquiry Officer.

13-00 The sitting is stopped for lunch break in order to restart at 1400 hours.

14-00 The Presenting Officer is asked to present all charges and to proceed the inquiry.

Article - I.

The presenting Officer read out the Article-I of the charges. The charge of unauthorised absence of the SPS was substantiated by the P.O. Producing D1.

Article - II. of the charge is presented and is supported by the Documents D-2.

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Article-III.

The charge is supported by Documents D3, D4, D5 & D6.

Hence the Presenting Officer is advised to submit his brief on or before 2.1.1988. The sitting is concluded at 1700 hours. Copy of this send to SPS and A.G.S.

Sd/-
P.O.
Jose Thomas.

Sd/-
A.V.George "

8. Proceedings dated 21.12.87 was immediately sent to the applicant. On receipt of the same the applicant submitted Annexure-III letter ~~xxxxxx~~ ~~xxxxxx~~ for setting aside the exparte order. But the disciplinary authority did not find any reason to set aside the exparte order and passed Annexure-I order imposing the penalty of removal from service.

9. In the appeal memorandum the only ground raised by the applicant is that sufficient opportunity was not given to him by the Inquiry Officer and that the notice of enquiry dated 21.12.87 was not served on him.

10. The appellate authority considered all the aspects and dismissed the same upholding the findings and conclusion of the disciplinary authority. The relevant portions of the order read as follows:-

"However, the SPS did not turn up for the sitting notified on 29.6.87 and the sitting was postponed to be held exparte to 20.7.87 vide letter No.Rule-14/87-88 dated 29.6.87 issued by the Inquiry Officer. The SPS or the AGS did not turn up for the sitting on 20.7.87 also. Though the SPS did not submit medical certificate, the Inquiry Officer has recorded that he proposes to give one more chance and the next sitting was notified for 24.8.1987. As per the proceedings recorded on 24.8.87, the SPS or the AGS did not turn up, but a message was received from the AGS stating that he was engaged otherwise. It was decided to send the minute of the sitting to the AGS and the SPS which contained information that the next sitting shall be on 9th September, 1987. The SPS or the AGS did not turn up on 9.9.1987 nor for the meeting on 30.11.1987. As per the records of the sitting of 21.12.1987, I note that the SPS or the AGS did not turn up though notices were sent stating clearly that the inquiry will be held Ex-Parte if they do not turn up on 21.12.1987 also. The SPS did not send any communication nor did he submit medical certificate for seeking abstention from the sitting notified

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practically every month since May, 1987. I am satisfied that the Inquiry Officer was fully justified in proceeding Ex-parte. The enquiry was seen conducted ex-parte and closed after examining the charges and relevant supporting documents on 21.12.87 with direction to the Presiding Officer to submit his final brief before 2.1.88. Copy of the proceedings is seen to have been sent to the AGS and SPS."

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"The prompt representation submitted by the SPS on receipt of the Minutes of sitting held on 21.12.87 to reopen the enquiry clearly shows that he was mentally very much alert and he was waiting for the enquiry to be held ex-parte (as notified in many occasions earlier) to start dilating tactics again. I do not see any merit in this. Inquiry Officer has considered this aspect properly and though he did not reopen the inquiry, gave the SPS a chance to furnish his statement of defence."

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".... He was directed for second medical opinion before the DMO, Quilon and had he turned up for that, his statement could have been validated. He stated during personal hearing that he was sending communications with the help of others. His wife is a government servant from 1982 and has to be considered to be familiar with Government procedures and it is highly improbable that he was not in a position to submit leave applications in time with the assistance of his wife or make any other representations orally to indicate the nature of his illness. As far as the state of his health during his period of absenteeism is concerned, one has to go by the medical certificate he has submitted whenever he has done so till he was referred for second medical opinion after which certificate of DMO only could have been acceptable. The SPS was present in the sitting held on 11.5.87 when he denied the charges and nominated the AGS also. Definitely, he was in sound mind to read the charges, know the charges and deny it. Even at that time, he did not venture to report for duty or submit proper leave applications or to appear for the second medical medical opinion before the DMO, Quilon. I, therefore, do not find any substance on this ground."

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"As desired by him, a personal hearing was given to him and has been recorded under his signature. His main contention is that he was mentally not sound and therefore, he did not remember to have received a communication to appear before the DMO. He did not disclose his mental problem because of social stigma etc. However, he was given a charge sheet, he participated in the sitting held on 11.5.1987 and denied the charges and appointed the AGS too. He must have been in his senses at that time, but he did not make any representation on these line while denying the charges. Similarly, he did not join duty at that time, when he was definitely normal mentally.

Further, communications were sent to his 'PUTHOOR address', where his wife who is in government service stays. If he was in a mentally disturbed state, his wife could have sent in a representation or communication. Since he submitted a representation to the Inquiry Officer on 2.1.1988, it has to be presumed that even at that time, he was normal. In short, there is every reason to suspect the veracity that his claims of absenteeism as due to mental disturbance. He did not show proof for any such problem about its treatment or present state of fitness even at the time of personal hearing."

11. The contentions raised by the learned counsel for the applicant are to be appreciated after bearing in mind the above aspects stated in the impugned orders, Annexure-I and II. Learned counsel for the applicant submitted that the procedure of Rule 14 (11) has not been followed by the Inquiry Officer. Rule 14 (11) reads as follows:-

"The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence -

- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);
- (ii) submit a list of witnesses to be examined on his behalf;
- (iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule(3)."

This sub-rule does not deal with the ex-parte enquiry. It says that if the Government servant fails to appear for the enquiry at the specified time or refuses to make his submissions the enquiry authority may require the presenting officer to submit the evidence against the Government servant and adjourn the case to a further date not exceeding 30 days

so as to enable the Government servant to prepare his defence and submit the list of witnesses after inspection of documents. This sub-rule contemplates proceedings at the initial stage. Sub-rule 20 of Rule 14 deals with the procedure for conducting ex-parte enquiry. It reads as follows:-

"If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte."

It is obligatory on the enquiry authority¹ in an ex-parte enquiry to issue notices of all hearings and serve them on the Government servant unless the first notice says that the enquiry will continue from day to day. Thus, even in ex-parte enquiry proceedings the "entire gamut of the enquiry" has to be gone through. Notices to witnesses should be issued, the documentary evidences should be produced and marked before the enquiry authority, the Presenting Officer should examine the witnesses cited to prove the case of the Department and the enquiry authority may ask such questions to the witnesses as it may think fit and proper. The enquiry authority should also record the reason why he is proceeding ex-parte and various steps which he has taken in this behalf to compell the Government official to participate in the enquiry.

12. In the instant case it can be seen from the orders at Annexures-I & II that the applicant appeared in the enquiry during the first and second sittings but refused to cooperate for further about four sittings. In spite of direction by the enquiry authority that the adjournment will be granted only on genuine ground supported by medical certificate the applicant failed to comply with the directions and absented himself from the enquiry proceedings

in spite of receipt of notices. Under these circumstances it is very clear that the applicant was adopting dilatory tactics only to delay the enquiry and defeat the attempt of the enquiry authority to complete the enquiry proceedings within a reasonable time. Therefore, the only course open to the enquiry authority was to conduct an ex-parte enquiry.

13. The minutes of the proceedings clearly show that the ex-parte proceedings were conducted strictly in accordance with the sub-rule 20 of Rule 14 of CCS (CCA) Rules. In effect, the absence of the applicant during the different spells of time mentioned in the charge memo are to be treated as admitted on the facts and circumstances of the case. The documentary evidences are sufficient to prove the guilt of the applicant. They have been produced and marked in this case. The applicant has no case that he has applied for leave with satisfactory medical certificates and pursued it to see whether the application has been granted by the competent authority so as to enable to establish that his absence from duty was not unauthorised as contended by the respondents. It is also admitted that the ex-parte proceedings were sent to the applicant without any failure.

14. In the light of the documentary evidence produced in this case the applicant is found to be guilty of the charges levelled against him. Considering the facts and circumstances of the case we are of the view that there is no failure of the enquiry authority in following the procedure contemplated in Rule 14 of the CCS (CCA) Rules.

15. The next contention is that the enquiry report has not been served on the applicant by the disciplinary authority before imposing the penalty as per Annexure-I. It is an

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admitted fact that the enquiry report was served on the applicant along with xxx Annexure-I order of penalty. The applicant has relied on the decision in Union of India vs. Mohd. Ramzan Khan (1991) 1 SCC 588, para 17. Supreme Court has clarified in another decision, S.P.Viswanathan vs. Union of India & others, 1991 Supp. (2) SCC 269 as follows:-

"By this petition under Article 32 of the Constitution the petitioner has claimed relief for issue of a writ of certiorari for quashing the order of termination dated December 6, 1989.

The petitioner was a railway employee posted as Commercial Clerk. Charges of misconduct were framed against him and inquiry was held but he did not appear at the inquiry. Pursuant to the inquiry report the disciplinary authority terminated his services. Hence this petition.

Learned counsel for the petitioner urged that since a copy of the inquiry report was not supplied to the petitioner the order of termination is vitiated. He placed reliance on the decision of this Court in Union of India v. Mohd. Ramzan Khan. It is true that this Court has held that if inquiry report is not supplied to the delinquent employee before passing the order of punishment, the order would be rendered illegal. But the decision of this Court is given a prospective effect it will not affect the orders passed prior to the date of rendering of the judgment (November 29, 1990) as would be clear from para 17 of the judgment.

As regards other questions raised in the petition we find no merit in the same. We, accordingly, dismiss the petition. There will be no order as to costs."

In Mohd. Ramzan's case the Supreme Court observed as follows:-

".... Therefore, the conclusion to the contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

Considering the above observations of the Supreme Court in para 17 of Mohd. Ramzan's case, this Tribunal has taken the view that disciplinary cases, which are pending before the Tribunal at the time of pronouncement of the above judgment, cannot be treated as closed matters for the purpose of dealing with the issue of service of copy of enquiry report and we granted reliefs after examining the facts of each case.

But the Supreme Court in the subsequent case interpreted the observations in para 17 to mean that orders passed before 29th November, 1990 shall not be reopened. In the instant case punishment order was passed by the disciplinary authority on 2nd May 1989 and hence it is covered by the latest judgment of the Supreme Court. Therefore, we reject the second contention of the applicant as well.

16. From the findings it is clear the the applicant has not set up a case that the charge of unauthorised absence is false and that the applicant should be treated as having been present for duty during the various spells of periods mentioned in this case.

17. In the result we see no merit in the application. It is only to be rejected. We do so. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

v/-