

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.144/2000

Thursday, this the 21st day of February, 2002..

CORAM;

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

V.P.Varghese,
(Ex-Mali, INS Venduruthy,
Southern Naval Command,
Cochin-4)
Residing at: Vadassery House,
Kuzhippilly, Allampilly.P.O.
Ernakulam District.

- Applicant

By Advocate Mr VR Ramachandran Nair

Vs

1. Union of India represented by
the Secretary,
Ministry of Defence,
New Delhi.
2. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Cochin-682 004.
3. The Chief Staff Officer(P&A),
Head Quarters,
Southern Naval Command,
Cochin-682 004.
4. The Commanding Officer,
INS Venduruthy, Naval Base,
Cochin-682 004.

- Respondents

By Advocate Mr C Rajendran, SCGSC

The application having been heard on 21.2.2002, the Tribunal on
the same day delivered the following:

ORDER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant has filed this original application
aggrieved by A3 order dated 21.11.1995 by which the 3rd
respondent imposed a penalty of removal from service on him and

A6 order dated 28.9.1999 by which the 2nd respondent has rejected his appeal and confirmed the penalty of removal from service passed by the 3rd respondent. He sought the following reliefs through this original application :-

(i) To call for the records leading up to Annexure A3 and Annexure A6 and quash the same.

(ii) To direct the respondents to grant the pay and allowances and all other consequential benefits pursuant to quashing Annexures A3 and A6.

(iii) To declare that, the respondents not permitting the applicant to join duty on 22.7.1992 after leave during the pendency of the departmental inquiry is illegal and direct the respondents to grant pay and allowances and all other consequential benefits to the applicant considering the applicant to be on duty till the date of removal from service.

(iv) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. According to the applicants' averments in the original application, he joined service under the 4th respondent as a Casual Mali on 12.1.1983. He was regularised as Mali in 1989. In June, 1990, in order to attend his ailing wife who was in United States of America(USA), he had to leave for USA on 30.6.1990. Before leaving for USA, the applicant sent a letter to the Office Superintendent stating his position. He claimed that he had handed over a leave application to his mother to be sent to the authorities requesting for sanction of leave to go to USA to attend the applicant's sick wife. However, he had not written for any specific period of leave as he could not anticipate the required leave at that time. The applicant came back in July, 1992 and reported to the Office Superintendent, INS Venduruthy to join the service. As per the direction of the Commander, INS Venduruthy, he submitted an application dated

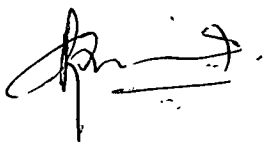


22.7.1992 to the 4th respondent requesting to permit him to join duty. He was advised that he would be called upon soon and as such he awaited for the reinstatement. By A1 order dated 5.8.1992 issued by the 3rd respondent, an inquiry officer was appointed to inquire into the charges of unauthorised absence of the applicant. When the applicant approached the Commanding Officer to take him in the service, he was replied that he would not be taken to service till the departmental inquiry was over. He attended the inquiry on 22.9.1992. He was issued with A2 memorandum of charges on 23.10.1990. He attended the inquiry on 22.9.1992, 6.11.1992, 18.11.1992, 17.12.1992 and 21.12.1992. The inquiry was subsequently held up for one year and the next date of inquiry was fixed only on 10.11.1993. But the said inquiry was not conducted on that date. Thereafter no inquiry was held for one and half years. On 8.3.1995, the applicant was asked to submit a written statement of defence which was submitted on 23.3.1995. He was issued A3 order dated 21.11.1995 by the 3rd respondent imposing the penalty of removal from service. On 30.12.1996, the applicant attained the age of 60 years. The applicant filed A4 appeal dated 20.8.1998 to the 2nd respondent. As the 2nd respondent did not consider and dispose of the appeal, he filed OA No.1726/1998 before this Tribunal challenging the penalty advice as well as seeking to issue a direction to the 2nd respondent to consider and dispose of the appeal. By A5 order dated 23.6.1999 the said OA was disposed of with a direction to the 2nd respondent to consider the condonation of delay in filing the appeal and if he deemed it fit to condone the delay and to dispose of the appeal on merits within a period of three months from the date of receipt of a copy of the order. The 2nd



respondent considered the appeal and issued A6 order dated 28.9.1999 confirming the penalty advice and rejected the appeal. Impugning A-3 to A-6, he filed this O.A. for the above reliefs.

3. The respondents have filed reply statement resisting the claim of the applicant. According to them the applicant was engaged as Mali on casual basis and he remained absent from duty unauthorisedly w.e.f 30.6.1990. He left India for USA without permission from the competent authority. A memorandum of charges was issued under Rule 14 of Central Civil Services(Classification, Control & Appeals) Rule, 1965 for his unauthorised absence w.e.f.. 30.6.1990 and leaving India to USA without permission of the competent authority. The memorandum of charges was returned by postal authorities undelivered endorsing remarks "Addressee left India - returned to sender". After publishing the casualty in a Malayalam daily, a departmental inquiry was ordered and conducted as per rules. During the conduct of inquiry, the applicant had unconditionally admitted both the charges framed against him. The applicant was afforded ample opportunities to defend the case in pursuance to the principles of natural justice. The disciplinary proceedings were finalised duly following the procedure laid down in Rule 14 of Central Civil Services(Classification, Control and Appeal) Rules, 1965 and the applicant was served with a order imposing the penalty of removal from service. Pursuant to the direction in OA No.1726/98, the delay in filing the appeal was condoned and the appeal was considered on merits and rejected by the appellate Authority by A6 order dated 28.9.1999. According to them the applicant was absent from duty unauthorisedly w.e.f. 30.6.1990



and no sanction was accorded for his re-employment as Mali on casual basis beyond 30.6.1991. He was not permitted to join duty as he was not on employment and the departmental inquiry for his unauthorised absence and for proceeding to a foreign country without prior permission of the competent authority was in progress. According to them, the applicant was not on casual employment from 30.6.1991 and inspite of this he was given a full opportunity to defend himself for his charges framed under Section 14 of Central Civil Services(Classification, Control & Appeal) Rules, 1965.

4. Heard the counsel for the parties. Shri V.R. Ramachandran Nair, the learned counsel for the applicant explained the factual aspects of the case and submitted that the principles of natural justice is violated in this case. According to him because of his wife's treatment the applicant had to leave India and it was because of these circumstances, he could not specifically mention the period of leave in his leave applicaion, he has not concealed the facts from the respondents, the applicant came back in July 1992 and reported for duty to the Office Superintendent, INS Venduruthy and the inquiry took three years and he was removed from service in 1995. The list of documents in support of charges were not supplied to the applicant along with the memorandum of charges. The Appellate Authority has ignored those grounds of the applicant and they agreed with the disciplinary authority. According to him, for unauthorised absence from duty even though proved, the major penalty of removal from the service could not be imposed as per the settled law by the various decisions of the Hon'ble Supreme



Court. The list of documents had not been enclosed with the charge sheet. The learned counsel for the respondents Shri C. Rajendran reiterated the contents of the reply statement and resisted the claim of the applicant.

5. We have given carefull consideration to the rival suibmissions and pleadings and also perused all the materials placed on record.

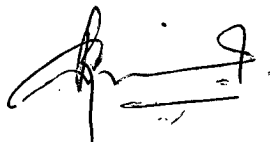
6. It is an admitted fact that the applicant had to leave India in June, 1990 due to the reason that his wife was sick in USA. It is also admitted by the respondents that the applicant came back and reported for duty in July, 1992, but he was not taken back and the inquiry was proceeded against him.

7. In para 4.10 of the original application, the applicant submitted:

"There is no reason whatever not to engage the applicant when he reported for duty and submitted his specific claim to take him in service. No doubt the respondents are enjoined in law to proceed against the applicant on alleged absence etc. However, on reporting for duty either he should have been engaged or should have been placed under suspension till the final proceedings are over. Thus it clearly proves that the disciplinary authority would have pre-determined to remove the applicant from service. This it is respectfully submitted is opposed to all principles of natural justice....."

Thus the applicant's case is that he was denied natural justice.

8. The respondents in para 6 of the reply statement specifically submitted that:

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"In reply to paragraph 4(4&10) it is submitted that the applicant was not permitted to join duty as he was not on employment and the departmental inquiry for his unauthorised absence and for proceeding to a foreign country without prior permission of the competent authority was in progress. The contention of the applicant that the disciplinary authority has pre-determined to remove the applicant from service opposing principles of natural justice is not at all correct. It is reiterated that the applicant was not on casual employment beyond 30.6.1991. In spite of this he was given a full opportunity to defend himself for his charges framed under Section 14 of Central Civil Services(Classification, Control & Appeal) Rules, 1965."

9. The respondents in the reply statement stated that the applicant was on casual employment for specific periods and therefore he had no right to be taken back to duty when the sanction for the post was not given beyond 30.6.91. However, the fact that he was proceeded against under Central Civil Services(Classification, Control & Appeal) Rules, 1965, would in our view indicate that it has been admitted by the respondents that the applicant was regularly employed. Moreover, in A-1 order dated 5.8.1992 applicant is described as "Mali(Declared Regular)". Further about regularisation of the applicant the respondents stated is as follows :-

"....The averment of the applicant that he was regularised as Mali in 1989 is totally incorrect and denied. As submitted earlier the applicant was engaged on casual basis for specific periods only depending upon the requirement work. The applicant was subsequently employed as Mali(Casual - Delcared Regular) with effect from 30.6.1989....."

10. From the above what we find is that even though the respondents in the reply statement denied that the applicant was regular but had actually declared him 'regular' in 1989.

11. On the basis of the materials placed before us, we are of the considered view that the respondents had all along treated

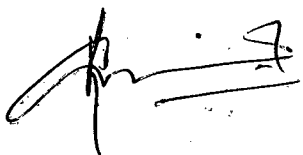


the applicant as a regular employee. As the applicant was regularly employed and he had reported for duty in 1992, the respondents should have either put him under suspension or should have taken him back to duty as he was being employed prior to his proceeding to USA. We are of the considered view that without keeping him in suspension and thus without any subsistence allowance, the applicant had not been given reasonable opportunity to defend his case thus violating the principles of natural justice. Under these circumstances, we are of the considered view that the original application is liable to succeed.

12. The applicant was removed from service in 1995. There is no proper explanation from the applicant as to why he has waited till 1998 to file an appeal. The applicant approached this Tribunal in February, 2000 through this original application as one of the impugned orders was issued in September, 1999. But there is no explanation as to why the appeal was filed in 1998 and he approached this Tribunal in 1998. Keeping all the above factors in view, the following directions are issued:

(i) A3 order dated 21.11.1995 and A6 order dated 28.9.1999 are set aside and quashed.

(ii) The applicant having reported back to the respondents on 22.7.1992 and he being removed from service on 21.11.1995, for the period from 22.7.1992 to 21.11.1995, he shall be eligible for 50% of wages. Respondents are directed to disburse this amount to him within a period of

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three months from the date of receipt of a copy of this order.

(iii) As we have set aside and quashed A3 and A6 orders and the applicant having attained the age of superannuation on 30.12.1996, he shall be entitled for all the other consequential benefits flowing from the setting aside of the A3 and A6 orders.

(iv) The respondents shall decide as to the treatment of the period from 30.6.1990 to 22.7.1992 in accordance with the extant instructions and rules.

13. The original application is disposed of with the above directions. No order as to costs.

Dated the 21st February, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER
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G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the order No.CS 6002/43/51 dated 5th day of August, 1992 issued by the 3rd respondent appointing an Inquiry Officer to inquire the charges of the applicant.
2. A-2: True copy of the memorandum of charges No.269/10/03/VPV dated 23.10.1990 issued by the 4th respondent.
3. A-3: True copy of the punishment order No.6002/43/51 dated 21.11.1995 issued by the 3rd respondent.
4. A-4: True copy of the Appeal dated 20.8.1998 filed by the applicant to the 2nd respondent.
5. A-5: True copy of judgment dated 23rd June 1999 in OA 1726/98.
6. A-6: True copy of the appellate order No.CS 2696/110 dated 28th September 1999 issued by the 2nd respondent.

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