

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 183/99

Tuesday, this the 21st day of August, 2001.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M. Nazir, S/o Meera Sahib,
Extra Departmental Mailman (Removed from service),
Railway Mail Service, Quilon,
(Panavila Thekkethil, Quilon-2)

Applicant

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. The Sub Record Officer,
Railway Mail Service,
Trivandrum Division,
Sub Record Office, Kollam.
2. The Senior Superintendent,
Railway Mail Service,
Trivandrum Division, Thiruvananthapuram.
3. The Chief Postmaster General,
Kerala Circle, Trivandrum.
4. Union of India represented
by the Secretary to Govt. of India,
Ministry of Communications,
New Delhi.

Respondents

By Advocate Mr P. Vijayakumar, ACGSC

The application having been heard on 21.8.2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

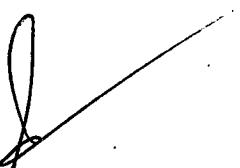
Applicant seeks to quash A1 and A5 and to direct the
respondents to reinstate him in service with full backwages and
continuity of service.

2. Applicant was an Extra Departmental Mailman. On 18.4.92, he was granted leave without allowance. He did not rejoin duty on expiry of leave. He submitted application for extension of leave. However, he reported for duty on 15.3.96.



First respondent did not permit him to join duty. He was informed that he is no longer an ED Agent, and he was removed from service. He was not served with any communication in this regard. He submitted representations to the Second respondent for permission to join duty. He was informed by the Second respondent that he was removed from service as per A4. Aggrieved by A4, he approached this Bench of the Tribunal by filing O.A.448/97. That O.A. was disposed of permitting the applicant to file an appeal before the Second respondent and if such an appeal is filed, the Second respondent shall consider the same and pass appropriate orders. In compliance to that, A1 impugned order was issued. In the absence of notice for an inquiry, there cannot be any disciplinary proceeding against him. Absence from duty is not always a misconduct. There is nothing on record to suggest that the applicant's absence from duty is wilful.

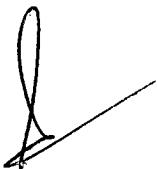
3. Respondents resist the O.A. contending that notice proposing disciplinary inquiry against the applicant was issued by the first respondent under Registered Post with A/D. The same was returned on 23.9.92 with the postal endorsement "Addressee left India". Subsequently, copies of the memos dated 2.11.92 issued by the first respondent was sent by Registered Post at his last declared home address on 5.11.92. The same was also returned to the sender as undelivered on 9.11.92 with the endorsement "Addressee left India". Subsequently, copies of the proceedings of Rule 8 of inquiry conducted on 25.11.92 was forwarded to the applicant along with the copy of daily order sheet by the Inquiring Authority by Registered Post with A/D dated 25.11.92. It was also returned with the postal endorsement "Addressee left India". Copy of the proceeding and daily order sheet dated 2.12.92 was also forwarded to the applicant by Registered Post on 2.12.92. The



same was returned with remark "Addressee left India". The Inquiry Report dated 30.12.92 forwarded to the applicant was also returned with the remark "Addressee left India". Final order dated 6.2.93 removing the applicant from service sent to him by Registered Post was also returned undelivered with the postal endorsement "Addressee left India". It was under this circumstance that in response to A2, the first respondent informed the applicant that his request cannot be considered, as he stood removed from service with effect from 6.2.93 as per A5 order. The said communication also addressed to the applicant was returned with the postal endorsement "Not know at Ashramam". He was dismissed after exhaustive consideration on merits as per order dated 6.11.98. The applicant wanted to avoid service of those communications as otherwise he would have furnished his correct address and whereabouts to the department. There are no grounds to interfere with A1 and A5. The proceedings against the applicant was conducted in accordance with law, the principles of natural justice and also rules 63 and 64 of the P&T Manual Volume III.

4. Learned counsel appearing for the applicant relying on Dr. R.C. Tyagi Vs. Union of India and others [1994 (1) SLR 838] that there is no proper service of notice and therefore, he is entitled to the relief sought. Here, it is a case of repeatedly service of notice was sought to be effected on the applicant, but all the communications were returned with the postal endorsements, such as "Addressee left India" and "Not know at Ashramam".

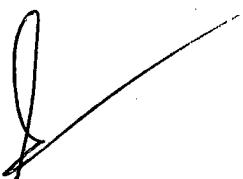
5. In Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association and another [AIR 2000 SC 2198] it has been held that:



"When evidence was led before the Tribunal, Bank produced the registered covers which had been received back with the endorsement "refused" and the addressee "not found in delivery time". Dayananda said he never refused to receive notice. In these circumstance the Tribunal thought it necessary to hold that notice was served on Dayananda as the Bank did not examine the Postman. Notice was sent on the correct address of Dayananda and it was received back with the postal endorsement "refused". A clear presumption arose in favour of the Bank and against Dayananda. Yet the Tribunal held that no notice was given to Dayananda as postman was not produced by the Bank. This appears to us to be rather an incongruous finding by the Tribunal.... This undue reliance on the principles of natural justice by the Tribunal and even by the High Court has certainly led to miscarriage of justice as far as Bank is concerned."

6. A6 is the order of this Bench of the Tribunal in O.A.448/97. As per A6, the applicant was permitted to file an appeal before the second respondent before 30 days and if such an appeal is filed, the second respondent shall be directed to consider and pass appropriate orders, keeping in mind the Supreme Court decision and the provisions of Indian Post Office Act 1898. In A1 impugned order it is stated that it is noticed that in the present appeal also the applicant has given his address as the same as the one available with the department, in which communications were sent to him and received back undelivered, and if he was available in the address, the delivery agent could have delivered the communication received in his address.

7. We had occasion to consider an identical question in O.A.1421/98 before this Bench of the Tribunal. In that matter Dr. R.C Tyagi's case was also referred to by us. Relying on AIR 2000 SC 2118 and the plea of the applicant therein was not accepted.



8. Learned counsel appearing for the respondents drew our attention to the ruling in Managing Director, ECIL, Hyderabad Vs. B. Karunakar (JT 1993 (6) SC 1) wherein it has been held that:

"Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, there would be neither a breach of the principles of natural or a denial of the reasonable opportunity."

9. Following the ruling in AIR 2000 SC 2118 and also the order by this Bench of the Tribunal in O.A.1421/98, the arguments advanced by the learned counsel for the applicant cannot be accepted.

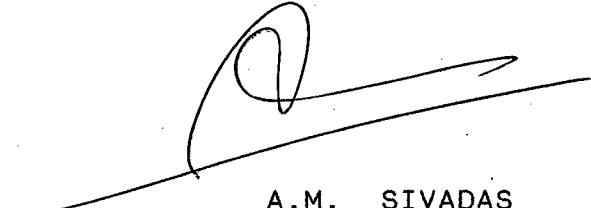
10. The applicant has also raised a ground that absence from duty may not always be a misconduct and there is nothing to suggest that the applicant's absence from duty is wilful. It is the admitted case of the applicant that he did not join duty on expiry of leave. What prevented him from joining duty on expiry of leave is not stated in the O.A. It is a case where without any reason or justification, he has absented himself. There is nothing on record to suggest that absence from duty was not wilful. This is a case where there is nothing on record to show that he was absent for valid reasons.

11. Accordingly, the Original Application is dismissed. No costs.

Dated the 21st of August, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

List of Annexures referred to in this order

- A-1 True copy of the order No.0S/OA-448/97 dt.6..11.98 issued by the 2nd respondent.
- A-2 True copy of the representation dated 23.5.96 submitted by the applicant to the 2nd respondent.
- A-3 True copy of the representation dated 16.9.96 submitted by the applicant to the 2nd respondent.
- A-4 True copy of the letter No.BII/11-7/QLN dated 31.10.96 issued by the 2nd respondent to the applicant.
- A-5 True copy of the Order No.PFMNazar dated 6.2.93 issued by the 1st respondent.
- A-6 True copy of the final order dated 18.8.98 in O.A.448/97 on the file of this Hon'ble Tribunal.