

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 186/2006

Thursday this the 8th day of March, 2007

CORAM

**Hon'ble Mr. N.Ramakrishnan, Administrative Member
Hon'ble Mr. George Paracken, Judicial Member**

**Puthiyadavan Narayanan,
S/o K.Karunakaran Nair,
Assistant Post Master (Accounts),
Taliparamba HPO, residing at "Sruthi"
Trichambarm, Taliparamba-670 141.Applicant**

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by
the Secretary to the Government of India,
Ministry of Communications,
Department of Posts, New Delhi.
- 2 The Chief Postmaster General,
Kerala Circle, Trivandrum.
- 3 The Director of Postal Services, Northern Region,
Office of the Post Master General, Northern Region,
Calicut.II.
- 4 The Superintendent of Post offices,
Kannur Division, Kannur.670 001.
- 5 P.Ramakrishnan, Superintendent of Post
Offices, Kanur Division, Kannur-670 001. ...Respondents

(By Advocate Mrs. Mariam Mathai, ACGSC for R 1 to 5)

This application having been heard finally on 1/3/2007, the
Tribunal on 8/3/2007 delivered the following:



O R D E R

Hon'ble Mr. George Paracken, Judicial Member

The applicant, an Assistant Post Master (Accounts) working at Taliparamba Post Office, is aggrieved against the Annexures.A1, A2 and A3 orders passed by the respondents treating the period of his service from 2.10.2003 to 5.10.2003 and 7.10.03 to 23.10.03 as Dies Non. By the Annexures.A1 Memo dated 25.6.2004, the respondent No.4 ordered to treat the aforesaid period of absence as "DIES NON" in accordance with Rule 62 of the Postal Manual Vol.III. Annexure.A2 is the order in appeal dated 3.6.005 passed by the Respondent No.3 rejecting the appeal dated 16.7.2004 filed by the applicant against the Annexure.A1 order. Annexure.A3 is the order in revision dated 7.2.06 passed by the 2nd respondent rejection revision petition dated 13.8.2005 of the applicant.

2 The relevant facts of the case are: There was a postal strike in Kannur Postal Division during October, 2003 and the striking employees had absented from duty unauthorizedly in a concerted manner for many days. They had also resorted to other methods like satyagraha in a tent erected in front of the Divisional Office. According to the applicant, after the strike on 1.10.2003 the next subsequent days from 2.10.2003 to 5.10.2003 were national holiday/closed holidays. After participating in the strike on 1.10.2003, according to him, there was no question of his joining duty because



of the subsequent holidays. However, he attended duty on 6.10.2003. Again the applicant absented himself from duty for the period from 7.10.2003 to 19.10.2003 without getting any prior permission, though he submitted a medical certificate subsequently covering the aforesaid period. The Inspector (PG), Kannur, in his report dated 26.10.2003 reported that the applicant was available in the satyagraha tent on 1.10.2003, 7.10.2003 to 10.10.2003, 13.10.03 to 17.10.2003 and 20.10.2003 to 23.10.2003. The applicant was served with notice for dies non dated 17.2.2004. In his reply dated 1.3.04 he submitted that he had struck work on 1.10.2003 and from 2.10.2003 to 23.10.2003. Since the Union had called off the strike in the evening of 1.10.2003, the period from 2.10.2003 to 5.10.2003 being national/closed holidays, should not have been treated as dies non. He has also submitted that since he had already entered on medical leave with effect from 7.10.2003, the period from 7.10.2003 to 19.10.2003 ought to have been treated as commuted leave. In the Annexure.A6 appeal dated 16.7.2004, he denied the allegation that he had absented from duty on 1.10.2003 and violated Rule 62 of the P&T Manual Vol.III. According to him this was one of the charges in the memo dated 12.1.2004 issued to him under Rule 16 of the CCS (CCA) Rules and in that proceedings he was already inflicted with the punishment of withholding of next one increment. On 6.10.2003 he was very much on duty and since he was suffering from viral fever he was not in a position to walk to office to attend the duty and therefore

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a written intimation was sent to the Post Master along with the relinquishing charge report on 7.10.2003 through a messenger. He had also obtained a medical certificate on 15.10.2003 from one Dr. K. Baby, ESI Dispensary, Taliparamba and submitted an application for further extension of leave from 14.10.2003 to 25.10.2003. He was getting cured and had rejoined duty on 20.10.2003 afternoon itself producing the medical fitness certificate. He has, therefore, submitted that the refusal of commuted leave by the Respondent No.4 for the period from 6.10.2003 to 19.10.2003 was not correct. His contention was that if the leave sanctioning authority had any doubt about the veracity of the application for leave made by him, the said authority should have sent it for a second medical opinion under Rule 19 (3) of the CCS (Conduct) Rules, 1972. He has submitted that the action of the SPO, Kannur (Respondent No..4) is arbitrary and unkind. While disposing of the appeal, the Respondent No.3 in the Annexure.A2 order dated 3.6.05 stated that the applicant had not joined duty in the afternoon on 1.10.2003 and the period from 2.10.2003 to 5.10.2003 being in continuation of the strike was treated as dies non. It was also stated that the individual cases were settled after examining them on merits. As against the allegation of the applicant that the Respondents have submitted that the Rule 16 charge sheet was issued to him for preventing the Post Master, Taliparamba from accepting the joining report from the newly transferred officials. He had entered leave on his own without getting

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permission of the competent authority. Order of dies non was issued for his unauthorized absence which was clearly mentioned in the show cause memo dated 17.2.2004 and it was for the same reason that the appellate authority rejected his appeal. The revisional authority has also rejected his revision petition noting that the applicant had been active in the agitation and it was obvious that he has produced the medical certificate under false pretext.

3 The respondents in their reply have submitted that after striking work on 1.10.2003 the applicant did not rejoin duty in the evening and as a result of which the Post Master could not make arrangements for the duty on the national holiday/closed holidays from 2.10.2003 to 5.10.2003. Since he had absented from duty without permission from the competent authority the days on which he did not perform the work were treated as dies non under Rule 62 of the P&T Manual Vol.III and it was for the very same reason that the period from 1.10.2003 to 5.10.2003 was also treated as dies non. According to the respondents, the applicant even though absented himself from duty on account of his alleged illness, he had been available in the satyagraha pandal during the strike period. Moreover, the medical certificate produced by him for the period from 6.10.2003 to 15.10.2003 was not from any authorized medical attendant and therefore he had already been notified on 16.10.2003 that the leave cannot be granted to him.

4 The applicant has challenged the impugned orders on the

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ground that the decision of the authorities to treat the period from 2.10.2003 to 5.10.2003 is arbitrary as those days were national/postal holidays. He has also submitted that the person who is sick is not expected to be on duty and he could only apply for and obtain leave. Therefore, the respondents' stand that the applicant was unauthorisedly absent from duty from 7.10.2003 to 19.10.2003 was not tenable. He has also submitted that it was for the respondents to refer his case for second medial opinion if they had any doubt about the genuineness of the application submitted by him. He had also alleged that the action taken against him is malafide and it was due to the personal vengeance of the 5th respondent who was a Group 'C' official in the same Kannur Postal Division and the Secretary of the National Union of Postal Employees (Class III) (affiliated to the National Postal Organization). It was only to settle the union rivalry that the 5th respondent had acted in a most malafide and vindictive manner in the case of the applicant.

5 We have heard Advocate Shri T.C.Govindaswamy for the applicant and Advocate Mrs. Mariam Mathai, ACGSC for the respondents. It is an undisputed fact that the applicant had participated in the strike on 1.10.2003. When it was called off on the evening of 1.10.2003 it was incumbent upon him to report back to the office to enable the Post Master to allocate the work on the national holiday 2.10.2003 and closed holidays from 3.10.2003 to 5.10.2003. The postal service being an essential service, the applicant cannot

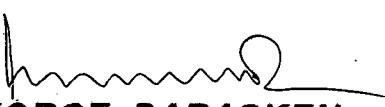
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get away from his responsibilities to attend the office and get instructions from his superior as to how the business of the office should be distributed amongst the staff during the four continuous holidays. The sincerity in work of an employee and the confidence that can be reposed in him by the higher authorities are vital in running any organization particularly the postal department which is entrusted with one of the most essential services of the country. In the pretext of national holiday/closed holiday, the applicant has been absconding from office feigning ignorance. Such insincerity in the office cannot be pardoned. The applicant should have shown responsibility in shouldering the work so that it was not dislocated. Secondly, it is an admitted fact that the employees in his office was on strike on 1.10.2003 and from 7.10.2003 to 19.10.2003. The applicant wanted to keep his legs in both the boats. He never wanted to be a black sheep found working during the striking period and at the same time did not want to attract the wrath of the authorities for participating in the strike and the satyagraha. He, therefore, mislead the authorities by staying away from the work on the pretext of illness. It was his case that he could not even go to the office to apply for the leave as he was suffering from viral fever. However, he was found in the satyagraha pandal during his leave period and participating in the strike. The applicant was trying to hide himself under the technicalities of the rules when actual truth was otherwise. As regards any employee is concerned, honesty and integrity are

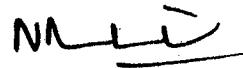
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much more important than any other qualities. According to the respondents, they have treated the cases of individual strikers and decided the matter on merits. In our considered opinion, the authorities were well in their powers when they took the decision in the case of the applicant also. We, therefore, do not see anything wrong in the action of the respondents. The OA is accordingly dismissed. There shall be no order as to costs.

Dated this the 8th day of March, 2007



GEORGE PARACKEN
JUDICIAL MEMBER



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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