

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.204/1998

Friday this the 9thday of March, 2001
CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

V.Surendran,
Group D (Leave Reserve)
Dolly Sadanam,
Valavupacha PO
Chithara.Applicant

(By Advocate Mrs. John Nellimala Sarai)

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1. Sub Divisional Inspector,
Post Offices, Kottarakkara.
2. Senior Superintendent of Post Offices,
Kollam Division, Kollam.
3. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.
4. Director General,
Postal Department,
New Delhi.
5. Union of India rep. by its
Secretary, Ministry of
Communications, New Delhi.Respondents

(By Advocate Mr. N. Anilkumar)

The application having been heard on 1.2.2001 the Tribunal
on 9.3.2001delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant has filed this application praying for
a declaration that he is entitled to be employed as Group D
unless an order of removal is communicated to him and for a
direction to the respondents to take action accordingly as
also for a direction to the second respondent to supply to

him a copy of the order passed against him for the alleged unauthorised absence and for passing appropriate orders on A.10 representation made by him on 20.10.97.

2. The facts in brief can be stated as follows. The applicant a confirmed Group D employee while working as Orderly Peon of the Ist respondent was transferred and posted as Leave Reserve Group D, Kottarakkara Sub Division on 7.10.91. The transfer of the applicant as Leave Reserve and posting in his place Smt.Rajamma, according to the applicant was not warranted or justified and was made only to give undue favour to the said Smt.Rajamma. The applicant had therefore, made a representation to the third respondent on 8.11.91 projecting his grievance. As the duties of Leave Reserve Group D was frequent deputation in short term vacancies for different context, the applicant being unwell had taken leave from 18.9.91 to 31.3.92. He applied for extension of leave with medical certificate for which he did not get any response. As he was fit for duty according to the applicant in August, 1996 he reported for duty before the Ist respondent who did not allow him to join duty. It is stated that the applicant was orally informed that he had been removed from service for unauthorised absence after an exparty enquiry but was not given a copy of the order or report. The applicant on 2.11.96, it is alleged, made a representation to the second respondent requesting for copies of the order but he did not get any reply. He repeated the representation on 10.2.97. As the repeated

requests for permission to join duty was allegedly ignored by the respondents 1&2 the applicant appeared before the Ist respondent on 20.10.97 seeking permission to join duty but he was not permitted to join duty. He made a written representation dated 20.10.97 (A9) to the first respondent for permission to join duty. As the applicant was again not permitted to join duty, the applicant on the very same day 20.10.97 sent by registered post a letter to the second respondent a copy of the representation. As the applicant was not permitted to join duty nor was he provided with the order of removal from service, the applicant has filed this application for the reliefs as aforesaid.

3. The second respondent has filed a reply statement stating that the reply statement was on behalf of all the respondents. The respondents contend that the transfer of the applicant as Leave Reserve Group D and appointment of Smt.Rajamma in his place was done in the exigencies of service. As the applicant did not report for duty even after a direction in that regard and as he did not appear before the medical authority for a second opinion on his leave application on medical grounds, he was proceeded against under Rule 14 of the CCS (CCA) Rules 1965 by the second respondent and was eventually removed from service after holding an exparte enquiry by order dated 30.3.94 as the charge sheet and all other communications addressed to the applicant to his last known address were received back

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with the remarks of the postal department "left India so returned to sender", contend the respondents. As the applicant has been removed from service by order dated 330.3.94 he was not admitted for duty when he approached in the month of October, 1997 and made a representation dated 20.10.97 and this action is as per rules, according to the respondents. The respondents, further contend that the applicant never asked for a copy of the order removing him from service nor has he requested for a copy of the enquiry report and that onus of proof regarding the communication of Annexure.A7, A8 and A10 representations is on the applicant. As the applicant had left India and had gone to Riyadh for employment, the communication sent to him were returned unserved for which the administration cannot be faulted, plead the respondents. For these reasons the respondents contend that the applicant is not entitled to any of the reliefs.

4. The applicant in the rejoinder has contended that the applicant has never left India nor did he have a passport and that the contention of the respondents that the applicant was out of India is untenable. Since neither the charge sheet nor the enquiry report, nor the order of removal has been served on the applicant the order of removal passed against the applicant being in violation of the provisions contained in Article 311 of the constitution, the applicant contends that he is entitled to be treated as continued in service.

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5. The respondents have filed an additional reply statement reiterating the stand that as the order of removal from service and other communications made prior to them having been returned with the remarks "addressee left India, return to sender" service on the applicant of the orders should be treated as sufficient.

6. We have heard the learned counsel on either side. We have also perused the entire pleadings and materials placed on record. Whether the applicant was rightly transferred and whether the transfer was to favour Rajamma etc. are beyond the real issue involved in this case. Though the applicant has claimed that from August, 1996 onwards he has been requesting the respondents to take him back to duty, the applicant having not been able to establish that by any evidence and as the fact that the applicant reported for duty on 20.10.97 is not in dispute, the question that arises for consideration is "whether the action of the respondents in not allowing the applicant to join duty on 20.10.97 was justified and if not what relief the applicant is entitled?"

7. The learned counsel of the applicant argued that even if the applicant was on unauthorised absence so long as an order removing him from service made after informing him of the charges and holding an enquiry as envisaged in the rules has not been served on him, the applicant is entitled to be treated to have continued in service and therefore the

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denial of permission to join duty on 20.10.97 is wholly unjustified. He argued that the fact that the applicant has not been served with any charge sheet nor has been called upon to appear before any enquiry authority nor a copy removing him from service made by the competent authority has ever been communicated to him is borne out from the pleadings the respondents cannot successfully resist the applicant's claim that he should be deemed to have continued in service as the order of removal is non est in the eye of law. Learned counsel of the respondents on the other hand argued that as the communication sent to the applicant including the order of removal dated 30.3.94 sent on 5.4.94 were received unserved with the remarks "addressee left India so returned to sender" in terms of Rule 30 of the CCS (CCA) Rules this has to be taken as sufficient service and that the argument that the charge sheet and the orders were not served on the applicant is untenable. Rule 30 of the CCS (CCA) Rules reads as follows:

"Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post."

In this case even the charge sheet issued was returned unserved with the acknowledgment that "addressee left India". It cannot therefore be said the charge sheet was communicated to him by registered post. All further notices as also the order of removal from service sent to the applicants last known address were returned unserved with

the same postal endorsement that the addressee left India but none with an endorsement that the applicant refused to accept the same. Mere sending a letter or notice by registered post with acknowledgment due and return of the same undelivered in the absence of the applicant cannot be treated as refusal by him to accept to infer sufficiency of service. In the Government of India instructions issued by Director General Posts and Telegraphs vide letter dated 101/1/65/SPA August, 1965 which is seen to have been relied on by the respondents in their reply statement what is stated is that if the documents sent by registered post acknowledgment due is not accepted by the addressee and is returned by the Post Office to the sender, further action may be taken as if the document has been served and due notice has been given to the employee concerned. Since none of the notices sent to the applicant including the one dated 4.8.92 directing him to report for duty, the memorandum of charges, the further communications of the enquiry officer or the final order dated 30.3.94 removing the applicant from service was returned with the postal endorsement that the applicant refused to accept but were all returned with the endorsement that the "addressee left India return to sender" even going by the Government order cited it cannot be taken that the service on the applicant of these letters or orders was sufficient. Therefore, here is a case where no charge sheet was served on the applicant, no enquiry was held with notice to him and no order of removal from service was ever communicated to the applicant. Under these circumstances,

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the first respondent before whom the applicant reported for duty atleast on 20.10.97 should have immediately allowed him to join duty. Proceedings under Rule 14 of the CCS (CCA) Rules should have been taken against the applicant for alleged unauthorised absence thereafter. We therefore hold that the action on the part of the respondents in not permitting the applicant to join duty on 20.10.97 is unsustainable in law as no order removing the applicant from service in conformity with the provisions of Article 311(2) of the Constitution has been passed or communicated on the applicant as on that date, the applicant should be deemed to have been continued in service.

8. Learned counsel of the respondents argued that as all the letters and communications addressed to the applicant were returned with the postal endorsement that the address left India, it has to be held that the applicant had left India and that it was not possible to the respondents to serve the notice and orders on the applicant and that this being the position it is to be deemed that there was sufficient service on the applicant of the orders. We do not find any merit in this argument. When the notice sent to the applicant directing him to report for duty by registered post on 4.8.92 was returned with the endorsement 'addressee left India' and when the Memorandum of Charges was also returned with the same endorsement the respondents should have resorted to the method of substituted service by publishing the charge sheet atleast in a local newspaper and

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affixing the charge sheet in the notice board and in ^{public} other places as also on the door of the applicant's last known residence. None of these steps has been taken by the respondents. It may be a case that the applicant was not present in his last known residence and had gone elsewhere. If the respondents had made a publication of the charge sheet as stated above, and if the applicant did not respond to it service of the charge sheet ^{could} have been presumed or inferred. Article 311(2) of the Constitution of India mandates that no person holding a civil post shall be dismissed or removed from service without informing him of the charges and holding an enquiry giving him a reasonable opportunity to defend himself. The proceedings taken in this case by the respondents against the applicant being in utter violation of the provisions of Article 311(2) of the Constitution is a nullity and non est in the eye of law. Further it is well settled by now that an order of termination of service would take effect only when the same is served on the person to be affected.

9. In the light of what is stated above, we allow this application and direct the respondents to reinstate the applicant as Group D employee with effect from 20.10.97 and to pay him full backwages from that date till reinstatement within a period of three months from the date of receipt of

a copy of this order. We make it clear that this order will not preclude the respondents from proceeding against the applicant for the alleged unauthorised absence in accordance with law. There is no order as to costs.

Dated the 9th day of March, 2001

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T.N.T. NAYAR

ADMINISTRATIVE MEMBER

A. V. Haridasan

A. V. HARIDASAN
VICE CHAIRMAN

(s)

List of annexures referred to:

Annexure.A7: True copy of the representation dated 2.11.96 submitted by the applicant to the 2nd respondent.

Annexure.A8: True copy of the representation dated 10.2.97 submitted by the applicant to the third respondent.

Annexure.A9: True copy of the representation dated 20.10.97 submitted by the applicant to the 1st respondent.

Annexure.A10: True copy of the representation dated 20.10.97 submitted by the applicant to the 4th respondent.

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