

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 206 of 2000

Thursday this the 4th day of April, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. K.D. Francis,
S/o late K.P. Devassy,
Ex-Mailman, SRO Aluva,
residing at Pazhazhi House,
Near St.Mary's Church, Koratti.Applicant

[By Advocate Mr. P. Ramakrishnan]

Versus

1. Union of India, represented by the
Director General, Department of Posts,
New Delhi.
2. The Director of Postal Services,
Office of the Post Master General,
Central Region, Kochi-16
3. The Senior Superintendent,
RMS 'EK' Division, Kochi-11Respondents

[By Advocate Mr. K. Shri Hari Rao, ACGSC]

The application having been heard on 7-3-2002, the
Tribunal delivered the following on 4-4-2002:

O R D E R

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

The applicant was a Mailman in the Railway Mail Service and was working in that capacity at SRO Alwaye. While so, he was issued a memo informing him that an enquiry under Rule 14 of CCS (CCA) Rules is to be held on account of certain misconducts alleged to have been committed by him. The charges alleged are:

- "a) that he was in judicial custody from 6-1-92 to 4-3-1992 but had failed to inform the concerned authorities about it;
- b) that he was unauthorisedly absent from 21-11-91 to 4-3-1992 and



- c) that he was leading an indecent life causing nuisance to his neighbours at P&T Quarters, Erumathala, Aluva."


2. The applicant had denied the charges. But, the Department had proceeded with the disciplinary action and appointed an Enquiry Officer for conducting an enquiry. The venue was fixed as RMS Office, Aluva. The applicant had requested the Enquiry Officer to shift the venue from Aluva to some other place because he had received threats from his enemies and he had feared for his life. The Enquiry Officer did not oblige and the enquiry was proceeded ex-parte. The Enquiry Officer found the applicant guilty of the charges No.1 and No.3 and submitted a report dated 28-12-1993. The disciplinary authority accepted the finding of the enquiry officer and passed an order on 9-3-1994 dismissing the applicant from service. True copy of the order is Annexure A1. The applicant preferred an appeal contending that the Enquiry Officer and the Disciplinary Authority had been carried away by the interested testimony of the witnesses and that the enquiry was conducted against the principles of natural justice. The appellate authority dismissed the appeal. True copy of the appellate order dated 7-7-1994 is Annexure A2. True copy of the appeal submitted by the applicant before the 2nd respondent dated 30-3-1994 is Annexure A3. Aggrieved by the orders at Annexure A1 and Annexure A2, the applicant has filed this Original Application under Section 21 of the Administrative Tribunals Act, 1985 with an application to condone the delay, seeking the following reliefs:-

- "(a) an order quashing and setting aside Annexures A1 and A2;
- (b) an order declaring that the applicant is entitled to be reinstated in service with full back wages and all consequential benefits;



- (c) an order directing the respondents to reinstate the applicant in service forthwith;
- (d) such other orders and directions as are deemed fit in the facts and circumstances of the case."

3. Respondents have filed reply stating that the applicant exhibited grave misconduct and gross indiscipline in that he suppressed material information about his arrest by the police on 6-1-1992 and remand under judicial custody from 6-1-92 to 4-3-92 at Sub Jail, Aluva and thereby violated provisions of Rule 3(1)(i) of CCS (Conduct) Rules, 1964 and instructions contained in OM No.30/59/54-ESG(A) dated 25-2-1955 of the Ministry of Home Affairs, Government of India, that he exhibited utter misconduct and gross indiscipline and lack of devotion to duty in that he remained absent from duty without any authority from 21-11-91 to 4-3-92, from 9-3-92 till the date of issue of charge sheet and failed to intimate his whereabouts or correct address and thereby violated provisions of Rules 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964, and that he exhibited utter misconduct or grave misbehaviour in that while residing at P&T Quarters Erumathala, Aluva, he used to maintain indecent life creating troubles and nuisance to the neighbours and on 23-12-91 he quarrelled with his wife and created an unpleasant situation resulting his removal by police and such of his indecent behaviour forced the neighbours to lodge a mass petition against him and thereby violated provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. The memo of charges dated 16-9-1992 was sent to Sub Record Officer, Aluva for being delivered to the applicant. Since the applicant was not turning up for duty, the memo was sent to his residential address, which was received back as undelivered. The then District Superintendent of Police (Rural) Aluva was reported to enquire and intimate the whereabouts of the applicant. The police intimated on 18-1-1993 that their enquiries could not get any



valuable information about his whereabouts. On 5-3-1993 a leave application was received from the applicant through post and the memo of charges was sent to him in the address furnished in the leave application. The applicant having denied the charges, an enquiry as provided under Rule 14 of CCS (CCA) Rules, 1965 was held. On completion of the enquiry, the Enquiry Authority submitted his report on 28-12-1993 holding the articles of charges I and III as fully proved and the article of charge No.II as partially proved. The applicant submitted a representation on 1-2-1994 stating that the enquiry was held in his absence, that his request to shift the venue of the enquiry was not granted by the Enquiry Officer and that he may be reinstated in service and the proceedings may be dropped. Considering his representation, final orders were passed on 9-3-1994 (Annexure A1) dismissing the applicant from service with immediate effect. An appeal was preferred as per Annexure A2. The request for shifting the venue of enquiry could not be acceded to and the applicant did not avail the opportunity extended to him. There is no irregularity in observing the rules and procedures. The applicant did not point out the Quarters from which he was facing the danger. There is no substance in his allegations. No opportunity has been denied. Therefore, Annexure A1 and A2 are to be upheld.

4. We have heard the counsel on both sides and have perused the materials evidenced on record.

5. The entire incident started when the applicant was remanded to judicial custody pursuant to a complaint against him under Section 138 of the Negotiable Instruments Act. Pursuant to the non-receipt of a summons issued by the Magistrate Court a warrant was issued and arrest was effected and the applicant had

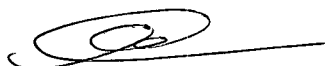


to be in the Jail for no fault of his. The complaint has been ultimately dismissed and the applicant acquitted. It is submitted that these facts have been enquired by an officer of the Department before the disciplinary enquiry was ordered and the respondents were well aware of the incident and the applicant had never attempted to suppress the facts. The arrest and detention was caused in respect of a civil liability. Therefore, the contention of the applicant that Annexure A1 and Annexure A2 are issued without proper application of mind has got some force, which is the subject matter of charge No.I. The allegation that there was suppression of material facts cannot be accepted in toto and the pretention of the respondents as if they were not aware of these things is also cannot be accepted. Therefore, the charge No.I as such cannot implicate the applicant. The charge No.II even otherwise was not fully proved, but the Enquiry Officer has come to the conclusion that the applicant was guilty of unauthorised absence for the set of period mentioned in the report. When an employee is arrested and detained in Jail, it cannot be termed as an unauthorised absence since it is a matter beyond his control. Therefore, the charge No.II also is not tenable. The charge No.III that the applicant quarrelled with his wife and created nuisance to the neighbourhood also is of no evidence. Copy of the alleged mass petition or evidences leading to that is also conspicuously absent. Therefore, the charge No.III also stand not proved.

6. The main question to be looked into is whether a reasonable opportunity was given to the applicant to defend the case. No reasonable opportunity was given to the applicant for defending the case. In the given set of circumstances, it is very clear that the applicant is having some threat for his life at Alwaye and his request that the enquiry may be shifted from



Alwaye to any other place other than Alwaye could have been considered by the Enquiry Officer especially when the applicant had specifically pleaded for that. The respondent department admittedly is having offices on premises in places other than Alwaye (nearby town) and in the best interest of justice, for affording a reasonable opportunity to the applicant it could have been conducted in such a place. The applicant could not go to Alwaye as that place is very adverse to him. It may be correct that enemies probably will threat for his life and his apprehension and fear could have been genuine. The most important aspect that has to be observed in a disciplinary proceedings is to comply with the principles of natural justice and the enquiry authorities should give an opportunity for the delinquent employee to present his case fearlessly and freely. In this context, we feel that the Enquiry Officer has not afforded the applicant a reasonable opportunity for defending the case and the enquiry report was made not in conformity with the principles of natural justice, which adopted and followed by the Disciplinary/Appellate Authorities in toto without any change. That also shows that the disciplinary and appellate authorities had not applied their independent mind in coming to the conclusion in Annexure A1 and Annexure A2 respectively. By means of denying an opportunity for the applicant to contest the matter for it being at Alwaye, is a clear violation of the natural justice and had he been given the opportunity, he could have had the right of cross-examination of witnesses and other reasonable defence that one could have availed of. The sheer desperation and helplessness of the delinquent could have considered by the Inquiry Officer and accepted the request for a change of place of inquiry other than Alwaye. We find a clear violation of natural justice by denial of opportunity.



7. The principles of natural justice requires that they should be given reasonable opportunity of representation in the inquiry to be conducted and appropriate orders for reasons in support thereof to be passed. Denial of opportunity is a grave procedure of irregularity and violative of principles of natural justice and therefore unfair and unjust. The Inquiry Officer should have appreciated that the delinquent employee was under the threat of life which is borne out by the alleged mass petition against him and the alleged quarrels with his neighbours etc. Therefore, there is some force in his contention that the place where the Inquiry Officer conducted the inquiry is not conducive nor peaceful as far as the applicant is concerned. Therefore, no prejudice could have been caused if the inquiry conducted anywhere other than Alwaye. The basic concept to be understood is that any law abiding persons may be and wanted to cooperate with the procedure, but will not risk his life. Therefore, it is prudent that the venue should have been fixed as requested for. There is no meaning in saying that the applicant did not cooperate with the inquiry proceedings. There is clear violation of the principles of nature justice on evaluation of the materials placed on record and the submissions made by the counsel it appears that the intention of the Inquiry Officer was to avoid the applicant in participating the inquiry by denying the opportunity so that ex party proceedings could be conducted. This attitude and procedure adopted is not in conformity with the principles of natural justice and therefore, the inquiry is vitiated by illegality since the entire proceedings was on an irregular footing and procedure.



8. In the circumstances, we find that there is clear violation of the principles of natural justice and Annexure A1 and A2 are not in conformity with the above said principles and therefore, liable to be set aside.

9. Accordingly, we set aside Annexure A1 and A2 and direct the respondents to reinstate the applicant into service. Considering the fact that the applicant has come to this Tribunal with a belated application, he will not be entitled to get back wages and other monetary benefits, from the date of his dismissal from service till the date of filing of this O.A. [Reference to the dictum laid down by the Hon'ble Supreme Court in Gurpreet Singh Vs. State of Punjab & Ors. [JT 2002 (1) SC 409].

10. The Original Application is allowed as above with no order as to costs.

Dated the 4th of April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ak.

APPENDIX

Applicant's Annexure:-

1. Annexure A1 True copy of the proceedings No.Dis/15/92 dated 9-3-1994 of the 3rd respondent.
2. Annexure A2 True copy of order No. ST/7-9/94 dated 7-7-1994 of the 2nd respondent.
3. Annexure A3 True copy of the appeal dated 30-3-1994 filed by the applicant before the 2nd respondent.