

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 277/89 109  
XXXNXX

DATE OF DECISION 4.10.1990

B.Krishnan Nair Applicant (s)

Mr.KRB Kaimal Advocate for the Applicant (s)

Versus

The Telecommunication Board Respondent (s)

rep. by its Chairman, Deptt.

of Commn., Govt. of India, New Delhi & 4 others

Mr.AA Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant challenges the order dated 25th May, 1981<sup>1</sup> of the Senior Superintendent, Telegraph Traffic, Trivandrum Division dismissing the applicant from service, the appellate order of the Director of Telecommunication dated 22nd September, 1981, Annexure-A2 and the order in revision dated 6th December, 1988, Annexure-A3 of the Member (Personnel), Telecom. Board, rejecting the application for revision. The facts of the case relevant for the disposal of this application as averred in the application can be briefly stated as follows.

2. The applicant who commenced his service in the Post and Telegraph Department as a Class IV employee in 1956 was promoted as Telephone Operator in 1960. The Appointing Authority was Director of Posts and Telegraphs. He was posted in the Central Telegraph Office, Quilon in 1977. While working at Quilon, he applied for a day's leave on 7.9.1979 to visit his native place at Trivandrum. As he was taken ill, on 12.11.1979, he submitted an application for leave for 59 days from 8.9.1979. As he did not recover from his illness, he applied for further extension of leave from 6.11.1979 for 55 days. He applied for further extension of leave with medical certificate. In the meanwhile, he received a direction from the 4th respondent, the Superintendent in charge, Central Telegraph Office, Quilon to report for duty. But owing to his illness, he could not comply with the direction. As the 4th respondent was not satisfied with the medical certificate, the applicant was directed to appear before District Medical Officer, Trivandrum to undergo ~~for~~ a medical examination. Pursuant to the above direction, the applicant appeared before the District Medical Officer on 18.3.1980 and the District Medical Officer on examination issued a certificate stating that the applicant would be fit to resume duty on 21.3.1980. But as the illness of the applicant was further aggravated he could neither report for duty nor apply for leave immediately. As the applicant felt that his condition would not improve, and that it would

not be possible for him to resume duty, he submitted an application to the 4th respondent seeking permission to retire voluntarily. While the applicant was hopefully expecting favourable orders on his application for voluntary retirement, he was served with a charge memo for absence from duty from 8.9.1979 and non-regularisation or refund of an advance of Rs.500/- taken for medical treatment. A departmental enquiry was held and the Enquiry Officer found the applicant guilty of the charges. The third respondent on 25.5.1981 accepting the report of the Enquiry Officer found him guilty of the charges and issued the impugned order at Annexure-A1 dismissing the applicant from service. Aggrieved by the order of dismissal, the applicant filed an appeal to the second respondent who by the order dated 22.9.1981, Annexure-A2 rejected the appeal. The revision petition filed by the applicant against the Annexure-A1 and A2 orders was also dismissed by the Annexure-A3 order dated 6.12.1988. Aggrieved by these orders, the applicant has filed this application. It has been averred in the application that the A1 & Annexure-A2 orders of punishment are vitiated by want of jurisdiction, that the enquiry has been held improperly, and that the impugned orders cannot be justified in the nature of the allegations in the charge sheet against the applicant. The applicant prays that the impugned orders may be quashed and the respondents may be directed to reinstate the applicant in service with continuity of service and with full backwages. He has alternatively

prayed for a direction to treat him as having retired voluntarily from service with effect from 21.3.1980 and to pay him pension and other benefits of retirement.

3. In the reply affidavit filed on behalf of the respondents it has been contended that inasmuch as the dismissal of the applicant from service was prior to 1985, the Tribunal has no jurisdiction to entertain the application, that the claim in the application that the applicant has filed a revision petition on 13.10.1981 is not correct, that his claim that he had applied for voluntary retirement prior to initiation of the disciplinary proceedings is not true to the fact, that the person who has issued the order of removal from service is competent to issue the order, that the applicant was removed from service after finding him guilty of the charges in a properly held departmental enquiry, and that the appeal and the revision have been properly considered and disposed of. According to the respondents the applicant is not entitled to any of the reliefs claimed by him.

4. We have heard the arguments of the counsel on either side and have also carefully perused the documents produced. At the outset we would dispose of the preliminary objection regarding jurisdiction. The impugned order, Annexure-A1 was passed on 25.5.1981, the appellate order dismissing the appeal was passed on 22.9.1981 and the order in revision was passed on 6.12.1988. The argument of the learned counsel

for the respondent is that the cause of action for the applicant arose in 1981 when his appeal was dismissed, and that the mere fact that a revision filed by him out of time has been disposed of on merit does not save the limitation, and that, therefore, as the grievance of the applicant arose three years prior to the commencement of Administrative Tribunals Act, this Tribunal does not get jurisdiction to entertain the claim of the applicant.

But the applicant has got a case that he had filed the revision as early as on 31.10.1981, and that he was following up the matter at various levels, and that he sent a reminder on 20.4.1986. It is seen from Annexure-A3 order that the Revisional Authority has considered the revision petition on merits calling for the records and has disposed of the same. Therefore, as the revision petition of the applicant was not rejected as time barred and since it was disposed of on merits, we hold that this application filed within one year from the date of the order on the revision application is well within time, and xx that the Tribunal has got jurisdiction to entertain the application.

5. The applicant has a contention that the third respondent is not competent to issue an order terminating his xxx service as he is not the appointing authority.

The respondents have contended that the applicant was originally appointed as Telephone Operator by DET, Trivandrum who is equivalent in rank to the third respondent

the order of removal is perfectly valid and the provision of Article 311(1) of the Constitution are not violated.

The applicant has not produced any evidence to show that he was appointed by a person superior in rank to the third respondent. Therefore, the contention of the applicant that the order of dismissal is bad for want of jurisdiction has to be rejected.

6. The learned counsel for the applicant argued that the allegations in the charge memo did not in fact spell out any specific misconduct that the enquiry held is not valid and proper, and the findings are perverse. He has also argued that the allegations in the charge memo do not constitute any serious misconduct warranting punishment of dismissal from service. It is now well settled that, if departmental enquiry proceedings have been held in accordance with law, then the Tribunal cannot interfere in the quantum of punishment. But we will try to examine whether the enquiry has been held and whether any definite charges against the applicant have been properly proved. It is a common case that the enquiry was held ex-parte. The enquiry has been held ex-parte because the applicant did not appear and take part in the enquiry. If the applicant did not respond to the notice, then the Enquiry Officer cannot be faulted for holding the enquiry ex-parte. It is admitted by the applicant that owing to his illness he could not take part in the enquiry.

7. A copy of the memorandum of charges dated 12.5.1980 has been produced and marked as Annexure-A4. Annexures-1 to 4 contain statement of articles of charges. It runs as follows:

"Statement of Articles of charge framed against Shri B.Krishnan Nair, Telegraph Assistant, Central Telegraph Office, Quilon-691001.

ARTICLE-I

That the said Shri B.Krishnan Nair while functioning as Clerk in Central Telegraph Office, Quilon is absent from Headquarters and from duty w.e.f. 8.9.1979. He had similarly absented without prior sanction of leave and was awarded "DIES NON" on 41 occasions totalling 1228 days, He has been deliberately and habitually flouting the "Oath of Allegiance" he had taken to carryout the duties of office loyally, honestly and with impartiality "thus committing an act of treason and rendering himself unfit to continue in public service in any capacity."

ARTICLE-II

That the said Shri B Krishnan Nair while functioning as Clerk, Central Telegraph Office, Quilon has refused to return to duty in spite of his being directed by the Head of the Office to resume duty at Headquarters Porthwith. This act of refusal to return to duty at Head Quarters has rendered him unfit to be retained in service any further.

ARTICLE-III

That the Said Shri B.Krishnan Nair while functioning as Clerk in the aforesaid office had obtained by misrepresentation an advance of Rs. 500/- for Medical treatment under Voucher No.46 dated 13.11.79. The advance was neither regularised by way of eligible medical claims within one month from the end of treatment on 20.11.1979 nor refunded till this day. He has thus defrauded the government of the sum of Rs.500/- rendering himself unfit to be retained in Government service."

On receipt of the enquiry report the disciplinary authority, the Senior Superintendent, Telegraph Traffic, Trivandrum issued the Annexure-A1 order dated 25.5.1981. In this order the Disciplinary Authority has stated that he was convinced that an enquiry was held according to the prescribed procedure. On the 1st charge, the finding of the Disciplinary Authority runs as follows:

"Shri B Krishnan Nair, Telegraph Assistant has been deliberately and habitually flouting the oath of allegiance taken by him by unauthorisedly absenting from duty on 41 occasions earning Diesnon on 1228 days and by unauthorisedly absenting from duty with effect from 21.3.1980. Absence of the official prior to 21.3.80 and with effect from 8.9.79 may not be construed as unauthorised since on second medical examination the official has been declared fit to join duty with effect from 21.3.1980 only."

A reading of the above quoted portion of the Disciplinary Authority's finding would show that he has been found guilty of being absent unauthorisedly from 21.3.1980 only because upto that date his absence could not be held to be unauthorised on the ground of the second medical examination. The case of the applicant is that on 21.3.1980 also he could not appear for duty as his illness ~~was~~ further aggravated. It is true that no evidence has been let in on behalf of the applicant before the Inquiry Authority, but in the Article I<sup>st</sup> of charge, there is absolutely no averment that the absence of the applicant was unauthorised. The very first

sentence in the charge is that Shri B Krishnan Nair while ~~working~~ functioning as clerk in the Central Telegraph Office, Quilon is absent from Headquarters and from duty with effect from 8.9.1979. Though the next sentence is "He had similarly absented himself without prior sanction or leave and was awarded dies-non on 41 occasions totalling to 1228 days," ~~But~~ it is evident that the charge was not framed for his unauthorised absence on the previous occasions because on previous occasions for his absence he was awarded dies-non and no further action had been taken.

The gist of the charge is that being absent from duty on 8.9.1979 onwards ~~and~~ having been absenting from duty earlier for which he was awarded dies-non, he has deliberately and habitually flouted the oath of allegiance and had committed an act of treason rendering himself unfit to continue in public service. In the statement of imputations explaining the charge what was the treason committed by the applicant has not been explained. It is also not clear how the delinquent has flouted oath of allegiance ~~far-fetched~~ to perform his duty honestly. This charge is absolutely and vague. The appellate and revisional orders Annexure A2 & A3 proceeded on the footing that he was charged for unauthorised absence whereas the first head of charge was not for unauthorised absence but for commission of flouting of the oath of allegiance and treason, when there is no foundation for such allegation at all. So we are of the view that

this charge being too vague and not specific finding that he is guilty of the charge has to be quashed.

7. The second charge is that the applicant ~~did not~~ refused to return to duty inspite of his being directed by the Headquarters or office to resume duty. In the statement of imputations explaining the charge it is averred as follows:

"Shri B.Krishnan Nair, Clerk, Central Telegraph Office, Quilon has ignored all directions from the Head of the Office since 8.9.1979 without proper application and prior sanction of leave he was informed by the Superintendent CTO Quilon through his letter No.PF/BKN/79-80/1068 dated 12.9.1979 that if he did not report for duty forthwith appropriate action would be taken against him as per rules. This letter was received and acknowledged by the official on 18.9.1979. But the official did not rejoin duty."

The case of the applicant is that he could not report for duty as directed, as he was unable to do so owing to illness.

The disciplinary authority has in his letter Annexure-A1 stated that by reason of the second medical examination his absence till 21.3.1980 cannot be held to be unauthorised while he was found fit to join duty only on 21.3.1980.

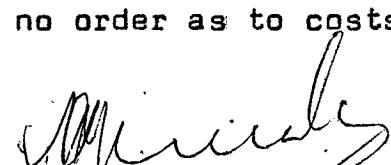
So the refusal on the part of the applicant to report for duty has been admittedly owing to his not being fit and accordingly, the same cannot be considered as an act of rendering himself unfit to continue in service. Therefore, the finding that the applicant is guilty of charge No.2

is also perverse. Then comes ~~the~~ charge No.3. This charge is that the applicant took an advance of Rs.500/- for medical treatment and did not regularise the same by producing medical bills and that, therefore, he had defrauded the department of the sum of Rs.500/-. The medical advance must have been sanctioned on the application of the applicant being satisfied by the authority competent to sanction the advance, that the same was required for the treatment of the applicant. If he did not submit his bills for reimbursement the consequence would be his liability to refund the amount. Unless it is averred that the very claim ~~is~~ that the amount was required for treatment was false to his own knowledge. It is abundantly clear from the allegations in the charge sheet itself that the applicant was ill and became fit to resume duty only on 21.3.1980. Therefore, it cannot be held that he did not require money for his treatment. As stated earlier, the non-regularisation of the advance by production of bills and vouchers can only entail forfeiture of the right to claim reimbursement. So this charge also is absolutely baseless. The finding on this has therefore to be set aside.

8. On a careful consideration of the materials placed before us, we find that the charge No.1 being highly far-fetched and vague and the other charges not established, the findings of the Enquiry Authority and Disciplinary Authority that the applicant was guilty of the charges are perverse. It is on the basis of the above perverse findings that

the applicant was removed from service by the impugned order at Annexure-A1. The Appellate Authority has not gone into these aspects mentioned above. The Revisional Authority also has lost sight of these aspects. In view of the finding that the charges against the applicant would not lie in the normal course, the applicant should have been directed to be reinstated in service with backwages and continuity of service. But from the records before us we are convinced that the applicant is very sickly and so disinterested in continuing in service. The slackness on his part to apply for leave to participate in the disciplinary proceedings, etc. in our view disentitles him from claiming any backwages. In this background we are of the view that the interest of justice would be met if the alternative prayer of voluntary retirement is granted. Undisputedly, the applicant had been in service for more than 20 years. To dismiss him from service without giving him any benefit for his long years of service in the circumstances mentioned above is quite unjustified.

9. In view of what is stated above, we allow the application in part, quash Annexure-A1, A2 and A3 orders and direct the respondents to treat the applicant as having voluntarily retired from service w.e.f. 21.3.1980 and to pay him pension and other retirement benefits accordingly. There is no order as to costs.

  
( AV HARIDASAN )  
JUDICIAL MEMBER

  
4. X. 90.  
( SP MUKERJI )  
VICE CHAIRMAN