

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATED 5.3.1990

PRES E NT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 279/89

K. Vaidyanathan

Applicant

Vs.

Director General  
Department of Telecommunications  
Sanchar Bhavan  
New Delhi-110 001

Respondent

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for the  
respondents

O R D E R

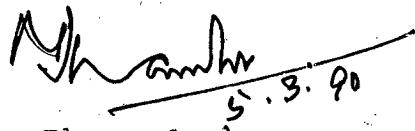
HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

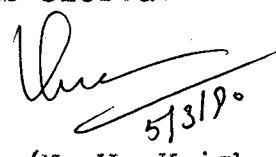
The applicant had originally filed this application before the Principal Bench of the Tribunal where it was registered as Application No. 2326 of 1988. By order dated 13.4.89 of the Hon'ble Chairman of the Tribunal this application was transferred to the Ernakulam Bench for disposal.

2. The application was registered as O.A. 279/89. A notice was sent to the applicant and by his letter dated 9th December, 1989 he stated that he has filed an M.P. dated 24.5.89 in this case wherein <sup>u a</sup> the prayer was made that the case be decided on merits without hearing him in person or through Advocate.

3. It is for that reason this applicant has been absenting himself xxx ever since the case was received on transfer during the last few hearings. The case was fixed for hearing today. The respondents filed a reply in which, inter alia, it is stated that a similar application has also been filed by the applicant before the Principal Bench which is registered as O.A. No. 1741/88 in which the Department has filed a counter affidavit on 30.11.89 and it is stated that the applicant has also filed his rejoinder and the case is due for hearing. Corroboration of this fact that a separate application is pending before the Principal Bench is available from the applicant's letter dated 9.12.89 referred to above in which he makes a reference to his O.A. 1741/88 in which he had filed the M.P. No. 429/89.

4. In view of the averments made by the respondent that the issues raised in this O.A. are the same as the issues raised in the O. A. pending before the Principal Bench, we are of the view that the proper course would be to close this application without prejudice to the applicant's right to prosecute the other application pending before the Principal Bench as it appears that he is pursuing the rejoinder in that case subsequent to November, 1989. We order accordingly. The O.A. is closed.

  
5.3.90  
(N. Dharmadan)  
Judicial Member

  
5/3/90  
(N. V. Krishnan)  
Administrative Member

24.2.89

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH.

MP 429/89 in  
OA 1741/88

Present: None for the parties.

Post this MP 429/89 before the Division Bench on  
27.3.89 under intimation to the applicant.

*Abd*  
( Amitav Banerji )  
Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

RA 53/90  
in O. A. No. 279/89  
~~XXXXXX~~

299

DATE OF DECISION 7. 1. 91

K Vaidyanathan : Petitioner/ Applicant (s)

Party in person ( Not appeared) Advocate for the Applicant (s)

## Versus

Union of India rep. by the Respondent(s)/Respondent  
Director General, Department  
of Telecommunications, New Delhi.

Mr V Krishnakumar, AGCSC Advocate for the Respondent (s)

**CORAM:**

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

## JUDGEMENT

Shri NV Krishnan, A.M.

This application has been filed seeking a review of our order dated 5.3.1990 in OA 279/89.

2 The review applicant has desired that the review application be decided on merits without any oral hearing.

3 Accordingly, we have heard the respondents who  
have filed the reply to which a rejoinder has also been filed  
by the applicant.

4 By our order dated 5.3.90, the O.A. was closed on the ground that OA 1741/88 filed by the applicant ~~xxxxx~~ is pending in the Principal Bench, as stated by the respondents, and that the prayer in that O.A. is the same as in the instant

0.1A

5 The two grounds on which the review is sought are  
a firstly, copy of the reply of the respondents filed in  
the original application was not made available to the  
applicant and secondly, though the prayers in both the  
applications may be the same, the grounds for making  
the prayers are totally different.

6 It is true that in the original application, the applicant has stated in para-11 that in case he fails to appear in person, the matter be decided on merits on the basis of the written statements. He has further confirmed this in a subsequent letter dated 4.11.89 addressed to the Registry. Be that as it may, this does not mean that a copy of the reply affidavit dated 5.3.90 of the respondents should not have been served on the applicant. We notice from that reply that there is no proof of service of that reply on the applicant. Indeed, the reply itself was filed in the Court on 5th March, 90 on the basis of which the original order passed.

therefore,  
7. We are of the view that, in the circumstances,  
the applicant has not been given an opportunity to send  
his rejoinder, if any, to the reply of the respondents.  
Nevertheless, for the reasons to be given, presently  
we are of the view that no injustice has been done to  
the applicant.

8 During the hearing of the review application we ~~were~~ directed the counsel of the respondents to produce a copy of the original application No.1741/88. That application has been produced. filed by the applicant in the Principal Bench. The relief sought in OA 1741/88 is identical with the relief sought in OA 279/89 which has been transferred to this Bench. Indeed, this is admitted by the applicant also. The point made by him is that the two applications have been filed on entirely different grounds. It is seen from OA 1741/88 that disciplinary action was started against him in January, 73 and he was punished in October, 78. On an appeal, the penalty was set aside with liberty to the respondents to initiate proceedings, if necessary. The respondents initiated criminal action in the same matter, as stated by the applicant, which ended in his acquittal in April, 84. The applicant also states that though departmental investigation was in progress even thereafter till April, 87 the respondents have averred in RA 9/87 and RA 10/87 filed before the Madras Bench that no fresh proceedings were contemplated against the applicant. He also refers to the statement made by the respondents before the Karnataka High Court in Writ Petition No.1443/89 that if the petitioner i.e., the applicant, were to be exonerated, he will be entitled to all permissible benefits which has been withheld because of the disciplinary proceedings.

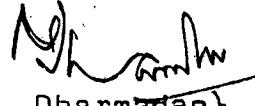
The applicant's contention is that despite all statement an these official order of exonerated has not been passed and hence he has filed that application directing the respondents to pass a final exonerated order in the disciplinary action and to give him all consequential benefits. The same relief is sought in OA 279/89 filed on 27.10.88 before the Principal Bench on a legal ground. It is stated that the applicant has retired from service on 30.6.85. He refers to the provision of Rules 9(2)(b) and 9(3) of the CCS(Pension) Rules, 1972 which states that departmental/criminal action after retirement shall not be instituted in respect of an event that took place more than 4 years before such institution.

As he was acquitted on 4.4.84, he contends that no fresh action can be taken after 4 years from 4th April, 84. It is for this reason that this application has been filed.

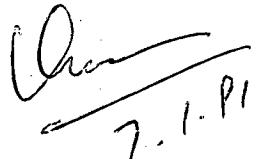
9 We are of the view that this application cannot stand independently because no action has been taken against him after his retirement and after the dead line indicated by him i.e., 5th April, 88. Consequently, this is purely a legal ground which can be raised by him in OA 1741/88 even though it has not been specifically stated as a ground therein. In the circumstances, we see no need to recall our

earlier order as we are of the view that the ground on which this application has been filed can still be urged by him before the Tribunal in OA 1741/88.

10. This review application is, therefore, dismissed.

  
(N. Dharmadan)

Judicial Member

  
(N.V. Krishnan)

Administrative Member

7.1.81