

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 339/89

~~XXXXXX~~

~~XXXXXX~~

DATE OF DECISION 16.07.1990

M. Vasudevan Nair \_\_\_\_\_ Applicant (s)

M/s O.V. Radhakrishnan and \_\_\_\_\_ Advocate for the Applicant (s)  
K. Radhamani Amma  
Versus

Sr. Supdt. of RMS 'TV' Divn. \_\_\_\_\_ Respondent (s)  
and others

Mr. V. V. Sidharthan, ACGSC \_\_\_\_\_ Advocate for the Respondent (s)

CORAM:

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

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

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

JUDGEMENT

(Hon'ble Shri S.P. Mukerji, Vice Chairman

In this application dated 6th June, 1989 filed under Section 19 of the Administrative Tribunals Act by the applicant Shri Vasudevan Nair, who has been working as Inspector of RMS under the Director of Postal Services, Central Region, Cochin has prayed for the expunction of the following entries made in his Confidential Report for the reporting year 1987-88:

Sl.No.7. State of Health : An Asthmatic Patient. Availed leave at frequent intervals.

Sl.No.17. Has the officer been reprimanded for indifferent work or for other causes during the period under report? If so, please give brief particulars.  Availed compensatory rest on 28.12.87 in lieu of invigilation duty on 27.12.87 without prior approval and due to persistent refusal to apply for admissible leave it was ordered to be treated as dies non vide letter No.Ds/GL/87 dt.4.3.88. Cautioned for failure to observe channel of communication vide Circle Office letter No.ST/18/87 dt. 24.9.87.

He has approached the Tribunal after his representations and appeals to the superior officers of the Department were rejected at Exbs A.3 and A.5. His main contention is that about state of health, the respondents had no basis to record that he is an Asthmatic patient without any medical report. He has referred to Rule 174 of the P&T Manual Vol.III in which only physical defects have been included being for/commented upon in Confidential Reports and the same need not be communicated. As regards the entry against item No.17 his contention is that having worked on a Sunday on 17.12.87 he availed of compensatory rest on 28.12.87 and when he was called upon to apply for eligible leave for that day, he represented stating that he was entitled to compensatory rest inspite of the fact that he was paid honorarium. He submitted an appeal on 21.2.88 before the Director of Postal Services against the order denying him compensatory rest and did not apply for eligible leave on 28.12.87. While the appeal was pending, the period of 28.12.87 was treated as dies non. This being not a penalty it could not be considered to be an adverse remark and cannot be entered in the Confidential Report. His further plea is that before entering these remarks he should have been given reasonable opportunity for his defence. Another part of adverse remark against item No. 17 that he was cautioned for failure to observe channel of communication should also be expunged as

this was also not preceded by any notice. The applicant has referred to Rule 174(8) of the P&T Manual Vol.III according to which a warning even though not a statutory penalty should be mentioned in the report if issued as a result of disciplinary proceedings. Since no disciplinary proceedings were held before cautioning him, the entry is inadmissible.

2. According to the respondents, the applicant himself had availed of leave on seven occasions during 1987-88 indicating on six occasions that he had been suffering from Asthmatic symptoms and trouble. As regards the other adverse remarks against item No.17, they have pointed out that he refused to apply for eligible leave for 28.12.87, as having been entitled to honorarium, he was not eligible for compensatory rest. When he failed to apply for eligible leave, the period of absence on 28.12.87 was treated as dies non. The conduct of the applicant who was holding a responsible post being subversive to discipline it was decided to make a reference to his conduct in the Confidential Report. He was also cautioned for not following the channel of communication. In accordance with Rule 174(8) of P&T Manual Vol.III it was not necessary to give a notice to him before making an adverse entry but it will be sufficient if he had been given opportunity for his defence in regard to the event which finds an adverse mention in the

also

Confidential Report. The respondents have / distinguished  
between cautioning and warning.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant could not be branded by the respondents as an Asthmatic patient merely because he had applied frequently for leave on the ground of Asthmatic symptoms and problems. There was, however, nothing wrong if the respondents against the column 'State of health' mentioned that the applicant availed off leave at frequent intervals complaining about Asthmatic symptoms and problems. This will be factually correct.

expected

4. As regards item 17, the respondents were / to indicate whether the applicant had been reprimanded for indifferent work or for other causes. Availing of compensatory rest which was treated as 'dies non' is not a reprimand and to our mind cannot find place against item No.17. As regards the second part of the adverse remarks that he was cautioned for non-observance of channel of communication, we feel that since the cautioning had not been preceded by any notice served on the applicant and consideration of (cautioning) the explanation given by him, the same / cannot find a place in the Confidential Report. This is because mention of such caution in the Confidential Report may entail adverse consequences which the applicant cannot be allowed to bear

without being given an opportunity of defence in accordance with the principles of natural justice.

5. In the facts and circumstances we allow this application partially on the following lines:-

- (a) The words 'Asthmatic patient' occurring in the adverse remarks against Sl.No.7 are to be expunged.
- (b) The entire entry against Sl.No.17 is to be expunged.

6. In the circumstances, there will be no order as to costs.

*AVH*  
(A.V. Haridasan)  
Judicial Member

*S.P.M.*  
(S.P. Mukerji)  
Vice Chairman

16.7.90

Ksn.