

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 7.11.1989

P R E S E N T

Hon'ble Mr.N.V.Krishnan - Administrative Member

and

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

ORIGINAL APPLICATION NO.36/89

Jayachandra Babu.S - Applicant

-versus-

1. Sub Divisional Officer,
Telegraphs Kayamkulam.

2. Union of India rep. by
Secretary to Govt.,
Ministry of Communication,
New Delhi - Respondents

Mr.MR Rajendran Nair - Counsel for applicant

Mr.PA Mohamed, ACGSC - Counsel for respondents

O R D E R

(Hon'ble Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the order dated 19.1.1988 issued by the first respondent removing his name from the seniority list of approved mazdoors may be quashed and that the respondents may be directed to assign work to the applicant as casual mazdoor and for the consequential relief. The facts of the case can be briefly stated as

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follows, The applicant was a casual mazdoor in the Telecommunication Department. From 23.10.1978 till 17.11.1981, he had worked for a total number of 816 days. While he was working as a casual mazdoor, in 1983 he met with an accident and on account of arose the disability which out of the accident, he was under prolonged treatment and was unable to work. In November, 1987 when he became fit to resume work though he reported for duty, the first respondent instead of assigning any work to him issued a memo dated 27.11.1987 stating that he was not available for work for the last four years, that therefore, it was proposed to delete his name from the list of approved casual mazdoors in that Sub Division and giving the applicant seven days time to submit his objections if any, to the proposal. The applicant submitted an explanation detailing the circumstances under which he was unable to report for work. But without considering the explanation, by the impugned order Annexure-I, the first respondent removed the name of the applicant from the list of approved casual mazdoors. The applicant has filed this application challenging the Annexure-I order as illegal and unsustainable in law and prayed that the impugned order that may be set aside and the first respondent may be

directed to continue to engage the applicant as casual mazdoor and also to pay him the wages for the days for which he was kept out of employment.

3. The application is opposed by the respondents. The first respondent has filed a counter statement in which it has been contended that, though the applicant had submitted an explanation for his prolonged absence on receipt of the memo issued by the first respondent and though he had produced two medical certificates to substantiate his case that he was under prolonged treatment. The explanation was not found satisfactory and so the applicant's name was removed from the roll of approved mazdoors and that this action is perfectly legal. Therefore, according to the respondents the applicant is not entitled to any relief.

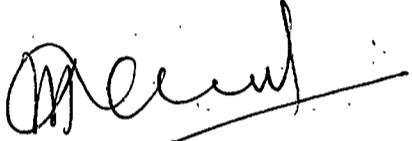
4. We have heard the arguments of the learned counsel appearing on either side and have also gone through the documents produced. That the applicant was an approved mazdoor since 23.10.1978 and that upto 17.11.1981 he had an aggregate number of 816 working days to his credit are facts admitted. In the impugned order Annexure-I, it is stated

that, since the applicant was continuously absent from work for the last four years, a memo dated 27.11.1987 was issued to show-cause as to why his name should not be deleted from the seniority list of approved mazdoors and that, as no satisfactory reply had been received so far from him, the first respondent ordered that the name of the applicant should be removed from the seniority list of approved mazdoors w.e.f. the date of issue of notice. On reading Annexure-I, one cannot be sure as to whether the applicant had submitted any explanation on receipt of the memo dated 27.11.1987. What is stated in Annexure-I is, so far no satisfactory reply has been received. It is not clear whether any reply was received or whether the reply if received was not satisfactory. Hence, the Annexure-I order is not a speaking order. In the counter statement filed by the first respondent, it has been admitted that the applicant had filed an explanation dt. 17.12.1987 explaining that the reason for his absence from work was he --- being under prolonged medical treatment. It has also been stated that the applicant had produced two medical certificates, one from Dr. M. N. Babu, Pananthodil Hospital, Chavara to the

effect that the applicant was under treatment for Rheumatism from 10.3.1983 to 9.9.1987 and another Medical Certificate from Dr.MR Sasidharan Pillai, Assistant Surgeon, P.H.Centre, Chavara to the effect that he was under the treatment of the doctor for three months from 10.9.1987 for Lumbo-sacral strain. It has further been stated that the explanation submitted by the applicant and the medical certificates were found to be not satisfactory and genuine and that, for that reason, the first respondent held that the absence was without just excuse and that therefore, the impugned order Annexure-I is valid. When the applicant was called upon to submit an explanation for his absence and when such explanation and supporting evidence were produced, then it was the duty of the first respondent to consider the explanation and the supporting evidence and to pass a reasoned speaking order. In this case, the first respondent has failed to do so. Therefore, we are of the view that the order of the first respondent Annexure-I is unsustainable in law. We are also not impressed by the averments in the counter statement that the explanation submitted and the contents of the medical certificates are contradictory and that the explanation submitted by the applicant was unsatisfactory.

5. In the result for the reasons mentioned in the foregoing paragraph, we quash the Annexure-I order and direct the respondents to assign work as casual mazdoor to the applicant in the order of his seniority. Since there had been latches on the part of the applicant also in reporting about his sickness in time, we are not making any order for payment of backwages.

6. We make no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


7.11.88
(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER

24.1.90

C.C.P.NO.6/90 in O.A. 36/89

Shri M.R.Rajendran Nair
None for respondents

SPM & ND

Notice to Respondents
served on 30.1.90
Notice to Respondents
served on 31.1.90

Issue notice to the respondents on the C.C.P.
returnable on 8th February, 1990.

24.1.90

AVK & AVH

Mr M.R. Rajendran, one of the respondents
in PA Mohamed, Case of the respondents.

When the matter was taken up
for hearing 15-day, Mr. Counsel of the
respondents produced a letter of the
Sub-Divisional Master Telegraph, Kanyakulam
dt. 22-1-90 stating that the orders
of the Tribunal has since been complied
with and the applicant had reported
for duty on 22-1-90 and work has been
assigned to him. In the circumstances,
as the orders has since been complied
with after filing of this CCP we find
it unnecessary to proceed with the
CCP and it is accordingly dismissed.

order communicated
on 19.2.90

19/2

2. R.
8/2/90