

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.379/02

Wednesday this the 14th day of July 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

G.Vasu,
S/o.Govindan,
Ex-sorting Assistant,
SRO, Kayamkulam,
RMS TV Division, Kayamkulam
Residing at Bijisas Bhavan,
Nagaroodan Kettiya Colony,
Karumkulam, Pulluvila P.O.,
Via. Poovar, Thiruvananthapuram.

Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. Senior Superintendent,
RMS TV Division,
Thiruvananthapuram.
2. Director of Postal Services,
Office of the C.P.M.G.,
Thiruvananthapuram.
3. Member (P), Postal Service Board,
Department of Posts, New Delhi.
4. Union of India represented
by its Secretary,
Ministry of Communications,
New Delhi.

Respondents

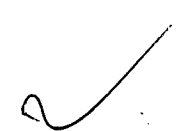
(By Advocate Mr.Sunil Jose,ACGSC)

This application having been heard on 14th July 2004 the
Tribunal on the same day delivered the following :

O R D E R


HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The applicant while working as a Sorting Assistant, SRO,
Kayamkulam was served with a Memorandum of Charges dated 3.9.1996
which contained the following two articles of charges :



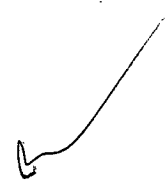
1. " Shri.G.Vasu while working as SA at SRO Kayamkulam unauthorisedly absented himself from duty in Kayamkulam RMS/1 on 9.2.1995 and 17.2.1995 violating provisions of Rule-25 of CCS (Leave) Rules 1972 and Rule-62 of P&T Manual Vol.III and thereby not maintaining absolute devotion to duty contravening Rule 3(1)(ii) of CCS (Conduct) Rules, 1964.
2. Shri.G.Vasu while working as SA at SRO Kayamkulam unauthorisedly absented from duty with effect from 11.3.1995 onwards even after being directed to join duty, violating provisions of Rule-62 and 63 of Postal Manual Vol.III and thereby acted in a manner quite unbecoming of a Government servant contravening Rule 3(1)(iii) of CCS (Conduct) Rules, 1964."

2. The applicant did not submit a statement in defence after receiving Memorandum of Charges. An enquiry was held. Before the enquiry officer the applicant denied guilt and explained the reasons why he was absent. The plea was recorded and the enquiry officer submitted his report holding the applicant guilty. The Disciplinary Authority vide order dated 16.6.1997 (Annexure A-1) accepting the finding held the applicant guilty of the charges and imposed on him penalty of removal from service. The applicant filed an appeal raising various grounds. The Appellate Authority by order dated 8.1.1998 did not interfere. The applicant took up the matter with the Revisional Authority. The Revisional Authority by order dated 15.2.2000 confirmed the Disciplinary Authority's order. Aggrieved the applicant has filed this application seeking to set aside the impugned orders Annexure A-1, Annexure A-3 and Annexure A-5 and for a direction to the respondents to reinstate the applicant back to service with all consequential benefits. The applicant has inter alia contended that the penalty of dismissal is grossly disproportionate to the Appellate Authority and Revisional Authority failed to take note of this condition and that the circumstances leading to the absence of the applicant explained by him have not been considered by the authorities.




3. We have heard Shri.Vishnu S.Chempazhanthiyil learned counsel for the applicant and Shri.Sunil Jose,ACGSC learned counsel for the respondents. Since the applicant has admitted guilt before the Enquiry Authority the only question to be considered is whether the penalty of removal from service could have been lawfully awarded for the misconduct of unauthorised absence and not reporting for duty even after instructions. On this point the learned counsel for the applicant referring to the impugned order Annexure A-1 especially to the penultimate paragraph submitted that in deciding the quantum of penalty the Disciplinary Authority has taken into account the matters which were not alleged in the Memorandum of Charges namely absence of the applicant, after the commencement of the enquiry. As no dishonest motive has been alleged in the Memorandum of Charges learned counsel argued that the major penalty of removal from service could not have been awarded to the applicant. He referred us to the Annexure A-II to Rule 14 of the CCS (CCA) Rules which reads as follows :

Types of cases which may merit action for imposing one of the major penalties.

1. Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g., -
 - a. possession of disproportionate assets;
 - b. obtaining or attempting to obtain illegal gratification;
 - c. misappropriation of Government property, money or stores;
 - d. obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.
 2. Falsification of Government records.
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3. Gross irregularity or negligence in the discharge of official duties with a dishonest motive.
4. Misuse of official position or power for personal gain.
5. Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.
6. False claims on the Government - like T.A. claims, reimbursement claims etc.

Going through the Memorandum of Charges we find that the only allegation against the applicant is that he remained absent unauthorisedly and did not report for duty even after being instructed to do so. We do not find any allegation that the applicant was grossly irregular or negligent in the discharge of duty with dishonest motives. The allegation forming the basis of the charges do not bring in the misconduct alleged in any of the categories of misconducts for which a major penalty is to be imposed according to the guidelines contained in Annexure.II to Rule 14 of the CCS (CCA) Rules. Therefore, in view of what is contained in Annexure A-II to Rule 14 of the CCS (CCA) Rules we are of the considered view that the penalty of removal from service could not have been awarded to the applicant and a penalty commensurate with the proved lapses alone could have been awarded. We notice that this important aspect was not adverted to either by the Disciplinary Authority or by the higher authorities. Therefore we are of the considered view that the impugned orders should be set aside to the extent of award of penalty of removal from service with direction to the Disciplinary Authority to award to the applicant appropriate penalty as permissible under the rules.



4. In the result, we set aside the impugned orders to the extent of award of the penalty of removal from service and remit the matter to the disciplinary authority to issue an order awarding to the applicant an appropriate penalty according to the rules. We also direct the respondents to reinstate the applicant in service immediately and to make available to him the full backwages for the period between the removal from service and reinstatement. This period should also be treated as duty for all purposes. These directions shall be complied with in two months from the date of receipt of a copy of this order. No costs.

Dated the 14th day of July 2004)

H. P. Das
H.P.DAS
ADMINISTRATIVE MEMBER

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A. V. Haridasan
A.V.HARIDASAN
VICE CHAIRMAN