

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 385/1991
XXXXXX

XXXX

DATE OF DECISION 20.10.1992

T. Santhamma _____ Applicant (s)

Mr. R. Rajasekharan Pillai _____ Advocate for the Applicant (s)

Versus

Union of India represented by the Secretary, Deptt. of Posts, New Delhi & 2 others. Respondent (s)

Mr. George C. P. Tharakan _____ Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. N. Dharmadan, 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? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *W*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure-B order by which the removal from service as EDBPM, Hailey Buria BO was confirmed by the Director of Postal Services, Central Region, Cochin.

2. The applicant has been working as EDBPM at Hailey Buria BO and she was on leave from 1.12.1985 to 15.12.85. She again availed leave for 45 days from 16.12.85 to 29.1.1986. She sought for extension of leave from 1.2.86 to 28.2.86. In the mean time the applicant got married and conceived. Consequently she started developing some physical disability and ailment on account of pregnancy and she was hospitalised. She could not inform the respondents about the continued necessity of taking further leave. All the same she submitted application for long leave upto February 1987. The postal authorities

issued Annexure-A containing the following charges:-

"Smt.T.Santhamma, EDBPM, Hailey Buria absented from duty unauthorisedly from 30.1.86 onwards in violation of the Rules for grant of leave to ED Agents. Smt. T.Santhamma by the above act exhibited lack of devotion to duty, thereby violating Rule 17 of ED Agents (Conduct & Service) Rules, 1964 as amended from time to time."

The applicant denied the charges and submitted written defence. Without accepting the same an enquiry was ordered and the enquiry authority found the applicant guilty of the charges which were accepted by the disciplinary authority ^{and} as per order dated 30.6.88. The applicant was removed from service for her unauthorised absence from 30.1.1986. The applicant filed an appeal before the 2nd respondent but it was rejected as per Annexure-B order dated 9.2.1989. In this application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant challenges Annexure-B, the appellate order, and prays for a direction to the respondents to take her back in service as EDBPM, Hailey Buria and allow her to continue in service after declaring that she is entitled to all wages from February 1987.

3. Respondents 1 to 3 in the reply statement submitted that the applicant while working as EDBPM, Hailey Buria was granted leave from 1.12.85 to 15.12.85 and again for 45 days from 16.12.85 to 29.1.86. But she did not join duty on the expiry of the leave granted to her. Her request for extension of leave from 1.2.86 to 28.2.86 was not granted. She ~~also~~ did not file an application for further extension of leave. Accordingly a communication was sent on 13.2.86 and 4.6.86 under registered post directing her to rejoin duty. But the

letters were received back with the remark

"By whom - By whom do you addressee me -
and you, whom I meet R.L. in the office?"

The charge sheet dated 22.7.86 for her unauthorised absence was also sent to her. Since she denied the charges after conducting an enquiry Annexure-R1 was passed.

The appeal filed by the applicant was rejected by the impugned order dated 9.2.1989 (Annexure-R2). The respondents have denied all the further allegations in the application and submitted that the application is only to be rejected.

4. Admittedly the applicant was absent without leave. She has no case that the charge levelled against her is false and she is innocent of the charges. The main plea of the applicant is based on the decision of the Supreme Court in Union of India vs. Mohammed Ramzan Khan, AIR 1991 SC 471.

5. We have considered the identical question in a recent judgment in N.Ramankutty Nair vs. The Divisional Engineer, Telecom, Thodupuzha & 3 others/and held as follows:-

"15. The next contention is that the enquiry report has not been served on the applicant by the disciplinary authority before imposing the penalty as per Annexure-I. It is an admitted fact that the enquiry report was served on the applicant along with Annexure-I order of penalty. The applicant has relied on the decision in Union of India vs. Mohd. Ramzan Khan (1991) 1 SCC 588, para 17. Supreme Court has clarified in another decision, S.P.Viswanathan vs. Union of India & others, 1991 Supp.(2) SCC 269 as follows:

'By this petition under Article 32 of the Constitution the petitioner has claimed relief for issue of a writ of certiorari for quashing the order of termination dated December 6, 1989.

The petitioner was a railway employee posted as Commercial Clerk. Charges of misconduct were framed against him and inquiry was held but he did not appear at the inquiry. Pursuant to the inquiry report the disciplinary authority terminated his services. Hence this petition.

Learned counsel for the petitioner urged that since a copy of the inquiry report was not supplied to the petitioner the order of termination is vitiated. He placed reliance of the decision of this Court in Union of India vs. Mohd. Ramzan Khan. It is true that this Court has held that if inquiry report is not supplied to the delinquent employee before passing the order of punishment, the order would be rendered illegal. But the decision of this Court is given a prospective effect it will not affect the orders passed prior to the date of rendering of the judgment (November 29, 1990) as would be clear from para 17 of the judgment.

As regards other questions raised in the petition we find no merit in the same. We, therefore, dismiss the petition. There will be no order as to costs.'

In Mohd. Ramzan's case the Supreme Court observed as follows:-

'... Therefore, the conclusion to the contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.'

Considering the above observations of the Supreme Court in para 17 of Mohd. Ramzan's case, this Tribunal has taken the view that disciplinary cases, which are pending before the Tribunal at the time of pronouncement of the above judgment, cannot be treated as closed matters for the purpose of dealing with the issue of service of copy of enquiry report and we granted reliefs after examining the facts of each case. But the Supreme Court in the subsequent case interpreted the observations in para 17 to mean that orders passed before 29th November, 1990 shall not be reopened. In the instant case punishment order was passed by the disciplinary authority on 2nd May 1989 and hence it is covered by the latest judgment of the Supreme Court. Therefore, we reject the second contention of the applicant as well.'

In the instant case Annexure-R1 punishment order is dated 30.6.88 and this was confirmed by further order dated 9.2.1989. Hence we are of the view that the penalty has been finalised and concluded before the date of the judgment in Mohd. Ramzan Khan's case which has only prospective application as per the law laid down by the Supreme Court. In the light of the decision we are of the view that there is no substance in the application

and it is only to be rejected. Accordingly, we dismiss the same without any order as to costs.

N.D.
(N.DHARMADAN)
JUDICIAL MEMBER

20.X.92

S.P.M.
(S.P.MUKERJI)
VICE CHAIRMAN

20.X.92

v/-