

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.42/93

Thursday, this the 3rd February, 1994

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN  
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

C P Velayudhan  
Salaried Commission Bearer  
CHTS-GHY Exp Batch No.1  
Southern Railway  
Cochin Harbour Terminus.

.. Applicant

By Advocate Mr P Sivan Pillai.

Vs.

1 Union of India through the  
General Manager, Southern  
Railway, Madras-3.

2 The Chief Commercial Superintendent  
(Catering), Southern Railway,  
Madras-3

.. Respondents

By Advocate Mr TPM Ibrahim Khan.

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant who had been working as a "Commission  
Bearer" under Respondent Railways seeks:

" to direct respondents to absorb applicant  
as a regular server/ bearer .... direct  
respondents to regularise the period  
(presumably period of absence) between  
1.3.80 to 10.7.80 as authorised absence...."

2 Applicant came earlier to this Tribunal, described  
by respondents in their reply statement, as the  
"Ernakulam Court", for certain reliefs. By Annexure A4  
a Bench of this Tribunal directed:

"... Applicant shall file a detailed  
representation with all supporting evidence  
and certificates .... If such a representation  
is filed by the applicant, respondents shall  
consider his claim for regularisation from  
1973 onwards ...."

3 A medical certificate was then produced by applicant before respondents. That was rejected by Annexure A9 stating that the respondent "was not satisfied with his statement that he was ill". No reasons are stated for coming to that opinion.

4 However, we are no longer concerned with the question of applicant proving the cause for his absence or providing justification therefor. The statement in the reply statement shows that the absence was not on account of the applicant, but solely on account of the respondents. When that is so, there is no obligation on the part of applicant to explain his absence. We are not unaware of the pleadings on different lines. But, we need only consider the case of respondent, as now stated in the reply. We read para-4 of the reply statement.

" Since the above action of the applicant involved in a disciplinary proceedings, (?) he was not allowed to work since then, unless the clearance was obtained from the Police Department .... After a lapse of four months, the applicant approached the Railway Administration with a P.M.C (whatever that means), covering up his unauthorised absence ...."

Since the clear statement is that he was not allowed to work, we need not try to find a meaning for the expression "after a lapse of four months", occurring in the paragraph quoted.

5 Respondents admit that they did not allow applicant to work. In the face of this statement, we hold that applicant cannot be made to suffer any of the consequences that may follow from his absence between 1.3.80 to 10.7.80. The absence was not on account of the applicant, but solely

on account of the respondents. It follows that applicant would derive benefits, if any he would have derived, if he had not been absent.

6 Application is disposed of. No costs.

Dated the 3rd February, 1994.

*P. Venkatakrishnan*  
PV VENKATAKRISHNAN

ADMINISTRATIVE MEMBER

*Chettur Sankaranair*  
CHETTUR SANKARAN NAIR(J)  
VICE CHAIRMAN

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