

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00647/2019

DATED THIS THE 11th DAY OF DECEMBER, 2019

**HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Smt.M.Kalaivani
W/o. Late Dhamodharan C
Aged 60 years, retired as
Assistant Passport Officer
Regional Passport Office
Bengaluru-560 095.
Residing at No.3/1
Krishnappa Garden
Viveknagar Post
Bengaluru-560 047.

....Applicant

(By Advocate Shri A.R.Holla)

Vs.

1. Union of India
By Secretary
Ministry of External Affairs
(PSP Division)
South Block
New Delhi-110 001.
2. The Chief Passport Officer
Patiala House Annexe
Tilak Marg
New Delhi-110 001.
3. The Regional Passport Officer
Passport Office
80 Feet Road, 8th Block
Koramangala
Bengaluru-560 095.

...Respondents

(By Advocate Shri Syed S.Kazi, ACGSC)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that while working as Senior Superintendent in Regional Passport Office, Bengaluru, the applicant submitted a notice on 4.3.2019 under Rule 48A of the CCS(Pension) Rules, 1972 seeking voluntary retirement on personal grounds. She made a request to relieve her of duties w.e.f. 1.5.2019(Annexure-A1). She also made a representation on 4.3.2019(Annexure-A2) stating that she has 226 days of earned leave at her credit and she desires to avail 47 days leave and report for duty on 1.5.2019. But in the meanwhile she was promoted as Assistant Passport Officer while she was on leave on 28.3.2019. Therefore, she cancelled her leave and reported for duty on 29.3.2019(Annexure-A3) and her assumption of office as Asst.Passport Officer has been approved by order dtd.9.4.2019(Annexure-A4). The respondent No.3 vide memorandum dtd.25.4.2019(Annexure-A5) informed the applicant that her request for voluntary retirement has not been considered on the ground that it was a conditional request. Further, it is stated that she may submit her request in the revised proforma and her complaint, if any should be submitted separately. Then the applicant preferred an appeal against the above memorandum to the appellate authority i.e. Central Passport Organisation, New Delhi on 29.4.2019(Annexure-A6). Thereafter, the Deputy Passport Officer issued a memorandum dtd.6.5.2019(Annexure-A7) directing the applicant to explain for her unauthorised absence from 5.3.2019 till 28.3.2019 and also as to why disciplinary action should not be taken against her. The applicant submitted her reply on 16.5.2019 pointing out that the Deputy Passport Officer is not the disciplinary authority for her and that he is not competent to issue such orders(Annexure-A8). Without disposing of her appeal, she was issued with a memorandum

dtd.30.5.2019(Annexure-A9) stating that her absence from 5.3.2019 to 28.3.2019 shall be treated as dies-non for all purposes. Further, it was ordered to recover her salary paid during the period. The applicant has retired on 31.5.2019 on superannuation by order dtd.31.5.2019(Annexure-A10). She submits that when she applied for leave from 5.3.2019 till 1.5.2019 prior to her retirement, treating the period of her absence from 5.3.2019 till 28.3.2019 as dies-non is not justified. Further it is not a speaking order. It is too cryptic and inadequate inasmuch as no reason has been given for treating the absence of the applicant as dies-non. If she has violated any rule, then it may be a cause for disciplinary action. The CCS(Leave) Rules 1972 do not provide for treating the period of unauthorised absence as dies-non. Further the memorandum dtd.6.5.2019 indicates the confused state of mind of the authorities concerned, as they are not sure as to whether to initiate disciplinary proceedings or proceedings under FR 17A against the applicant. The question of applying FR 17A arises when there is a finding that the applicant has remained absent unauthorisedly after following a due procedure in accordance with law. By treating the period of absence from 5.3.2019 to 28.3.2019 as dies-non, the applicant has been imposed a penalty which is not provided under the CCS(CCA) Rules, 1965. The applicant has been allowed to retire w.e.f. 31.5.2019 on superannuation, without reserving any condition. As such, the disciplinary action against the applicant as contemplated in terms of Annexure-A7 has become redundant and the impugned order at Annexure-A9 is arbitrary and liable to be quashed being unreasonable. Therefore, the applicant has filed the present OA seeking to quash the order dtd.30.5.2019(Annexure-A9) and refund the amount if recovered already in pursuance of the same.

2. The respondents, on the other hand, have submitted in their reply statement that the applicant had given notice for voluntary retirement from service on 4.3.2019 and the same was forwarded to Ministry for approval on 14.3.2019. Further she had applied for EL for the period from 5.3.2019 to 30.4.2019 which was not approved by Head of Office i.e. RPO Bengaluru owing to administrative exigencies and it was conveyed to her vide office letter dtd.11.3.2019. But the applicant remained absent from duty till 28.3.2019 which attracts proviso to FR 17-A(iii) according to which any employee remaining absent unauthorisedly for deserting the post shall be deemed to cause an interruption or break in the service of the employee. She reported for duty only on 29.3.2019 to assume the charge of APO when she was promoted to the post of APO from Sr.Supdt. and thereby wilfully absented herself from duty from 5.3.2019 to 28.3.2019 which adversely affected the delivery of passport services in a timely and reliable manner. Further her request for voluntary retirement could not be considered as per CCS(Pension) Rules, 1972 since her request was a conditional one. Accordingly, she was advised to furnish a fresh notice request for voluntary retirement citing genuine reasons.

3. The respondents submit that while performing her duties as Granting Officer, the applicant issued Passport to one person namely Mrs.Kajal w/o Sushanta Roy vide Passport No.R9103906. Assistant Director, ICP, Haridaspur vide their letter dtd.2.9.2018 informed that during immigration checking, it was revealed that the passport holder is originally a Bangladeshi National by Birth and entered into India with her Bangladeshi passport but did not depart to Bangladesh. As a Standard Operating Procedure, the applicant has to issue a Show Cause Notice to Mrs.Kajal and a letter to the Superintendent of Police, Bengaluru Rural for conducting a discrete enquiry into the matter. However, she refused to sign the letter despite

written instructions of the matter by Deputy Passport Officer in-charge and Passport Officer, Bengaluru and thereby disobeyed the orders of her seniors. In accordance to the proviso to FR 17-A(iii) and sub-rule (1) of Rule 3 of CCS Conduct Rules, a memorandum dtd.6.5.2019 was issued to the applicant seeking explanation for her unauthorised absence and insubordination. The reply of the applicant in response to the above memo was examined in the Ministry under relevant rules and was not found satisfactory. Therefore, the period of unauthorised absence i.e. from 5.3.2019 till 28.3.2019 was treated as 'dies-non' for all purposes. The respondents has relied on the decision of the Hon'ble Apex Court in the case of *Krushnakant B Parmar vs. Union of India*(2012 AIR SCW 1633 SCC) in support of their contention and submits that the order at Annexure-A9 is correct and the relief sought for by the applicant is not tenable. Therefore, the OA is liable to be dismissed.

4. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant had sought for leave from 5.3.2019 vide letter at Annexure-A2 and as has been held in any number of cases, taking of leave prior to retirement generally cannot be denied and orders issued accordingly. In this case, the respondents claim that her leave application was rejected by them on 11.3.2019. But vide Annexure-A8 the applicant would claim that she did not receive any such communication and that she reported for duty on her promotion on 29.3.2019. One more relevant point which she makes is that she has been paid full salary for the month of March 2019 and this raises a presumption that there was nothing in terms of non-grant of any leave etc. for this period. Apparently there has been some issue relating to following the instructions of the superior officers by the applicant and this has led them to issue the final orders at Annexure-A9. Her request for voluntary

retirement was also not accepted since it had mentioned that certain complaints were made by her against the immediate officer in her office which was considered as conditional by the respondents. It is possible that the action could have been taken because of her making such complaints. We do not want to go into all these issues at this point of time except that based on her having been paid full salary for the month of March 2019 and she having categorically stated that she had not received any intimation regarding non-sanction of her leave, there is no case for issuing Annexure-A9. We, therefore, quash Annexure-A9 and direct the respondents to settle her terminal and other benefits accordingly without any delay as she retired on superannuation on 31.05.2019.

5. The OA is allowed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00647/2019

Annexure A1: Copy of applicant's notice dtd.4.3.2019

Annexure A2: Copy of applicant's representation for leave till 1.5.2019

Annexure A3: Copy of applicant's representation dtd.29.3.2019

Annexure A4: Copy of the order dtd.9.4.2019

Annexure A5: Copy of the memo dtd.25.4.2019

Annexure A6: Copy of applicant's appeal dtd.29.4.2019

Annexure A7: Copy of the memo dtd.6.5.2019

Annexure A8: Copy of applicant's representation dtd.16.5.2019

Annexure-A9: Copy of the memo dtd.30.5.2019

Annexure-A10: Copy of the order dtd.31.5.2019

Annexures with reply statement:

-NIL-
