

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 579 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Smt. Jayashree Dash, aged about 59 years, W/O- Bhabani Shankar Dash, at present working as TGT(English), K. V. No.4, At- Neeladri Vihar, Bhubaneswar, Dist-Khurda, Resident of Defence Colony, Neeladri Vihar Bhubaneswar-17, Dist-Khurda, Odisha.

.....Applicant.

VERSUS

1. Union of India, represented through the Commissioner of Kendriya Vidyalaya Sangathan, New Delhi, 18th Institutional Area, Sahid Jeet Singh Marg, New Delhi-110016.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar Colony, Mancheswar, Bhubaneswar-751017.
3. The Principal, Kendriya Vidyalaya No.2, CRPF Campus, Bhubaneswar-751011, Dist-Khurda, Odisha.

.....Respondents.

For the applicant : Mr. A. Mishra, counsel

For the respondents: Mr. H. K. Tripathy, counsel

Heard & reserved on : 22.11.2019 Order on : 07.01.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This Original Application (in short OA) has been filed by the applicant under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) *To quash the order of rejection dated 06.01.2016 under Ann.-A/2;*
- (ii) *And to direct the Respondents to sanction medical leave for the period from 16.12.2012 to 13.01.2013;*
- (iii) *And to direct the Respondents to regularize the period from 16.12.2012 to 13.01.2013 and pay arrear salary;*

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;

And for which act of your kindness the applicant as in duty bound shall ever pray.

2. The applicant claims in the OA that while working as a teacher under the respondent Kendriya Vidyalaya Sangathan (in short KVS), she had applied for leave from 16.12.2012 to 21.12.2012 to visit her husband who is at Nashik and she fell ill at Nashik for which she was under treatment. After treatment, she joined on the reopening day after the winter vacation from 24.12.2012 to 13.1.2013 and submitted the medical fitness certificate and other documents for sanction of medical leave from 16.12.2012 to 13.1.2013 which was, however, rejected by the respondents who treated the said period as Extra Ordinary Leave (in short EOL) without salary. It is averred by the applicant that before rejection of her request for leave no opportunity of hearing was not allowed to her, for which, the decision violated the principles of natural justice. She also alleged that no order rejecting the leave for the period in question, was communicated to her.

3. The applicant, thereafter, submitted a representation dated 4.1.2016 (Ann-A/1 of the OA) for post facto regularization of the period in question by sanctioning the medical leave. The respondent no.3 rejected the request by his letter dated 6.1.2016 (Ann-A/2). The applicant submitted another application on 7.9.2016 (Ann-A/4) and then on 18.4.2017 (Ann-A/5) to the respondents for sanction of leave for the period in question. When no reply was received, the applicant has filed this OA.

4. The applicant has also filed the MA No. 558/2017 for condoning the delay in filing the OA. It is stated in the MA that the applicant is continuing to represent since 4.1.2016 for regularization of the period from 16.12.2012 to 13.1.2013. The judgment of Hon'ble Apex Court in the case of SDO Telegraph, Bijnore vs. Central Govt. Industrial Tribunal-cum-Labour Court, Kanpur & Another, reported in 2006 SCC Vol. I (L&S) 420, Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation & Another (2010) 2 SCC (L&S) 50 and Tukaram Kana Joshi & Others vs. Maharashtra Industrial Development Corporation & Others (2013) I SCC 353.

5. Counter has been filed by the respondents opposing the OA. Regarding the facts of the case, para 5 of the Counter stated as under:-

“That, the averment made in para-4.2 to 4.5 are not at all correct and hereby denied. It is humbly submitted here that the applicant was working at Kendriya Vidyalaya No.2, Bhubaneswar and applied HPL (Half Pay Leave) w.e.f 17.12.2012 to 19.12.2012 on the ground of her medical check up and has submitted Unfit Certificate w.e.f. 18.12.2012 to 25.12.2012 and applied for HPL(Half Pay Leave) w.e.f 18.12.2012 to 25.12.2012 on medical ground in conjunction with winter break and the Doctor has declared fit to join on duty w.e.f. 26.12.2012. The applicant applied for leave from 17.12.2012 to 19.12.2012 and left the station with the permission of the Principal, KV, No.2, CRPF, BBSR and she had medical check-up at Nasik, which is a completely pre-planned one and extended her leave up to 25.12.2012 by producing the Medical Certificate from Nasik which was sanctioned leave of kind due w.e.f. 17.12.2012 to 25.12.2012 including Winter Break-2012. As the Winter Break was continuing from 23.12.2012 to 13.01.2013 and she has joined on KV. No.2, CRPF, Bhubaneswar on reopening day i.e. on 14.01.2013. It is pertinent to mention here that, she has been paid salary for 16 days i.e. from 01.12.2012 to 16.12.2012 for the month of December-2012 and 18 days in January, 2013 i.e. from 14.01.2013 to 31.01.2013 for which the salary of the applicant from 17.12.2012 to 31.12.2012 (i.e.15 days) for December-2012 and from 01.01.2013 to 13.01.2013(i.e. 13 days) for January-2013 i.e. total 28 days salary has not been paid to Smt. Jayashree Dash TGT(Eng.). The entire period of 28 days has been treated as EOL(Extra Ordinary Leave) by the Sanctioning Authority i.e. the Principal, KV. NO-2, CRPF, BBSR and the same has been communicated to the applicant by the Competent Authority i.e. the Principal KV.No-2, CRPF, BBSR. Hence, the applicant's absence period from 17.12.2012 to 13.01.2013 is treated as EOL which is regular as per Leave Rules. The representation dated 04.01.2016 of the applicant was examined sympathetically in terms of

leave Rules and disposed of with a reasoned and speaking order, by the Competent Authority i.e. the Principal, KV No.2, CRPF, BBSR vide order No-F-15065/1147/2016/1330 dated 06.01.2016 (under Annexure-A/2) at Page-13 to the OA) communicated to the applicant which is completely legal, valid and sustainable in the eye of law. Therefore, the entire allegation are bad, baseless and contrary to law and only to mislead and misdirect to this Hon'ble Tribunal the applicant has filed this OA for his personal gain without basis. The copy of the letter dated 06.01.2016, Pay Bill for the month of December-2012 & January-2013 and Staff Attendance Registrar for the month of December 2012 and January 2013 are filed her with as Annexure-R/1, R/2 & R/3 respectively.”

6. No Rejoinder has been filed by the applicant. Heard learned counsel for the applicant, who submitted that the applicant had proceeded on leave with permission from the competent authority and thereafter, she had to extend the leave on medical ground. But the leave was not sanctioned and no salary for the period in question was released without giving any opportunity of hearing to the applicant.

7. Learned counsel for the respondents was heard. He pointed out to the averments in para 5 of the Counter and stated that after the period was treated as EOL, the applicant did not object to it. He further submitted that the applicant retired in the year 2017 when she also filed the OA challenging the decision belatedly as the first representation against the decision to treat the period as EOL was submitted in 2016. Learned counsel for the respondents also filed copy of two judgments in support of his case. These judgments are in the case of New India Assurance Co. Ltd vs. Vipin Behari Lal Srivastava, (2008) 3 SCC 446 and Vivekanand Sethi vs. Chairman, J&K Bank Ltd. and Others, (2005) 5 SCC 337.

8. We have duly considered the submissions by learned counsels and the pleadings by both the parties. Learned counsel has raised the question of delay on the part of the applicant. It is a fact that the matter has been delayed since the grievance relating to sanction of leave pertaining to the period from 17.12.2012 to 13.1.2013 should have been raised by the applicant within the

time stipulated under law. It is also a fact that the leave for the period has been refused without issue of any order by the competent authority, since no such order has been furnished by the respondents although it is mentioned in the Counter that the decision of the respondent no. 3 in this regard has been communicated to the applicant. The order dated 6.1.2016 (Ann-A/2) also referred about the decision of the then Principal to treat the above period as EOL without giving any details about specific order in this regard. It appears that prior to the order dated 6.1.2016, no other order has been passed by the respondent no. 3. Hence, the applicant cannot be faulted not to have raised the grievance earlier and the MA filed for condoning delay deserves consideration. Accordingly, the reasons for delay in filing the OA as given in the MA No.558/2017 are considered to be satisfactory and the delay in filing the OA is condoned while allowing the said MA.

9. The reason for not sanctioning the leave in question as mentioned in the Counter is that the sanctioning authority i.e. the Principal has treated the period in question as EOL as the leave taken by the applicant was considered to be pre-planned. There is nothing in the Counter to show that any fault or lapse on the part of the applicant has been established by the respondents as per the rules, before taking the decision about her leave for the period in question. It cannot be said that the applicant was on unauthorized absence, since she had applied for leave to the authority before proceeding on leave. It has been stated in para 5 of the Counter that she had extended leave up to 25.12.2012 by producing medical certificate including the winter break from 23.12.2012 till 13.1.2013. No letter was issued to the applicant advising her not to proceed on leave as applied for to join duty. No such letter or order was issued by the respondent no. 3 till she joined on duty after vacation. The reason for not allowing the request of the applicant has not been mentioned by the respondents in their pleadings.

10. Learned counsel for the respondents referred to the judgment in the case of Vipin Behari Lal Srivastava (*supra*). In the said case, the employee concerned was on leave for more than 600 days and a letter was issued to the applicant informing that leave cannot be sanctioned in his favour and he was directed to join duty. The employee had applied for leave subsequently. In the cited case, disciplinary proceeding was initiated against the employee for unauthorized absence and after conclusion of the proceedings, he was removed from service. The facts in the present OA are clearly different since the applicant had applied for leave and obtained permission from the authority before proceeding on leave and she had applied for extension of leave on medical ground as stated in the Counter. Further, no disciplinary proceeding was taken against the applicant in the present OA. If the allegation against the applicant was on unauthorized absence, then before taking any action against her, disciplinary proceeding as per the rules should have been initiated against her before taking any penal action or at least opportunity of hearing should have been allowed to the applicant. Hence, the judgment cited by learned counsel for the respondents will not be helpful.

11. The respondents' counsel has also cited the judgment of Hon'ble Apex Court in the case of Vivekanand Sethi (*supra*) in which the facts as stated in the judgment are as under:-

"Despite the expiry of the period of leave in June 1983, the workman did not report back for duties, whereupon the Branch Manager, Amritsar, informed him by a letter dated 2.11.1983 that he should rejoin his duties, which was not complied with. An explanation was sought for from him by Memorandum dated 2.11.1983 whereby and where under he was asked to show cause as to why he had been on unauthorized leave for such a long period. Such an explanation was to be filed by 10.11.1983. He had further been asked to join duties. Despite service of the said memo., the workman failed to join his duties by 31.12.1983. Consequently, a show cause notice dated 31.12.1983 served on him whereby and where under he was intimated that in the event of his failure to resume his duties by 15.1.1984 he would be deemed to have been discharged from the services of the Bank. In reply thereto, a telegram from one Krishan Chand Sethi was received stating that the workman being unwell could not join his duties by 15.1.1984. He again applied for grant of leave on medical ground on 15.2.1984. As by reason of the aforementioned act on the part of the workman, the Bank

felt a great deal of inconvenience, a memorandum was served on 20.2.1984, pursuant whereto again he requested for sanctioning of leave. His services were dispensed with by invoking clause (2) of the bipartite settlement stating :

"3. Consequent upon receipt of these applications from Mr. V. Sethi, the bank had no alternative but to make confidential enquiries about the state of his health in pursuance of which it was revealed that Mr. V. Sethi was keeping a good health and even attended to his family business. This convinced the bank that Mr. Sethi was not at all interested in the services of the bank, which prompted it to issue an order vide No. Per/Disp/84-448 dated 17.5.1984 in accordance with the provisions contained in Memorandum of Settlements dated 8.9.1983 and Mr. Sethi was deemed to have voluntarily retired from the services of the bank w.e.f.8.2.1984."

A legal notice was served upon the Bank herein after a long time demanding the reinstatement of the workman on or about 6.4.1989, to which it was replied that he had been engaged in some business at Samba and thus it was clear that he had no interest in continuing in the services of the Bank. Sometime in June 1989, a conciliation proceeding was initiated by him under the Industrial Disputes Act resulting in a reference made by the Central Government in terms of a Notification dated 7.8.1990."

12. From above, it is clear that facts of the cited case of Vivekanand Sethi (supra) are different from the existing OA since in that case the employee concerned did not respond to the notice from the employer to rejoin and the intimation from him regarding his illness was inquired into by the employer and such claim was found to be incorrect. Thereafter, the procedure as per the settlement with the workers' union was followed to dispense with his services. In the present OA, no inquiry was conducted by the respondents to verify the claim of the applicant regarding her medical condition for the period under question and no intimation was given to the applicant to rejoin the duty from leave. Further, no order to reject the leave applied for was passed by the competent authority who simply decided that the applicant will be allowed EOL instead of medical leave for which she had applied for. It is also not the case of the respondents that the applicant's leave application had some deficiency or required documents were not furnished by the applicant and no reason for not sanctioning the leave applied for was communicated. Hence, the cited judgment is of no assistance for the respondents' case in this OA.

13. In view of the discussions above, we are unable to agree with the contentions of the respondents and hold that no reason was communicated by the then respondent no. 3 while deciding not to sanction the medical leave as applied for and hence, such a decision cannot be sustained. Accordingly, the impugned order dated 6.1.2016 (Ann-A/2), rejecting the representation of the applicant, is quashed and the matter is remitted to the respondent no. 3 to reconsider the matter with reference to the leave application of the applicant for sanction of the medical leave for the period from 16.12.2012 to 13.1.2013 in accordance with the rules prevalent at the relevant point of time and dispose of the leave application by passing a speaking order, copy of which is to be communicated to the applicant within two months from the date of receipt of a copy of this order. It is also clarified that if the leave is sanctioned, then the consequential benefits will be disbursed to the applicant within one month from the date of passing the order sanctioning the leave in question after reconsideration as stated above.

14. The OA stands allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

pms