

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.97/2017

Date of decision: 30.12.2019

CORAM:- R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).

Jaysingh Yadu Kadam
S/o of Yadu Kadam
Age-61 years (D.O.B.01.06.1955)
Retired as Sub-post Master wai
Residing at 55 Koyana Sumitra
Hsg. Society, Golibar Maidan,
Godoli, Satara-415 001.

... Applicant.

(By Advocate Ms. Vaishali Agane)

VERSUS.

1. The Union of India
Through the Chief Post
Master General,
Maharashtra Circle,
Mumbai-400 001.
2. The Sr. Superintendent of
Post Office, Satara Division,
Satara-415 001.
3. The Superintendent of Post
Offices, Satara Division,
Satara 415 001.

4. The Director of Postal Services
o/o Postmaster General
Pune Region, Pune-411 001.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R (O R A L)

Per: R. VIJAYKUMAR, MEMBER (A)

1. When the case is called out, Ms. Vaishali Agane, learned counsel appeared for the applicant.
2. Shri V. S. Masurkar, learned counsel appeared for the respondents.
3. This OA has been filed on 14.12.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned orders at Annexure A-1 and A-2.

b) The Hon'ble Tribunal may further be pleased to direct the Respondents to treat the period of dies non as duty release the nine days salary with 12% interest.

c) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.

d) Cost of the Application be provided for."

4. The applicant has filed this OA challenging

the orders of the respondents dated 22/28.04.2015 (Annexure A-1) which records that the applicant had applied for two days casual leave which was initiated by an email on 12.03.2015 but the applicant again applied via email on 17.03.2015 for two days casual leave and then he applied on 21.03.2015 with a medical certificate seeking 10 days leave w.e.f. 21.03.2015 to 30.03.2015. This ground was also denied by the Competent Authority and he was directed by the respondents by RPAD on 24.03.2015 to resume duty immediately and he was also informed that he had been appointed as Main Observer for the Postman/MG exam to be held on 29.03.2015. The applicant neither replied to this instruction nor did he join duty and finally joined duty only on 30.03.2015 along with a medical fitness certificate.

5. The respondents have recorded that he was deliberately and habitually producing medically unfit certificate and thereafter, treated the unauthorized absence period from 21.03.2015 to 29.03.2015 for 09 days as dies non under FR-17(1) without prejudice to taking Disciplinary Action.

6. The applicant then retired on 31.05.2015 and filed a representation on 27.06.2016. This was replied by the respondents in their letter dated 08.03.2016.

The learned counsels for the applicant and respondents were heard. The learned counsel for the applicant urge that this order of treating the period of absence as dies-non was a major penalty and that the applicant had to undergo medical check-ups subsequent to his bypass surgery in the year 2008. The learned counsel for the respondents has filed his reply and has taken strong objection to the above contentions of the applicant.

7. Pleadings and arguments of the learned counsels for the parties have been carefully considered.

8. It is amply clear by reference to the description of major penalty that treating the period of absence as dies-non under FR-17(1) is not classified as major penalty in CCS Conduct Rules. Further, FR-17(1) only reflects the principle that the person who does not work will not accordingly be paid for that period by virtue of his unauthorized absence. Further, it is also amply clear that the applicant has filed a representation after his retirement and such a representation with regard to the order treating his absence on dies non does not fall within any statutory provisions and therefore, the applicant was always at liberty to challenge the

order of the respondents by filing an OA even upon receipt of the order of the respondents dated 20.04.2015 within a year from that date in view of the provisions of Section-21 of the Administrative Tribunals Act, 1985.

9. However, the applicant has filed this OA on 14.12.2016. by claiming that he was not barred by limitation since the respondents had only replied to him on 08.03.2016. However, repeated non-statutory representations of this kind following the orders of the respondents will not extend the period of limitation as held by the Hon'ble Apex Court in case of S. S. Rathore Vs. State of Mandhya Pradesh reported in AIR 1990 SCC 10.

10. It is not in dispute that the applicant's request for casual leave was rejected on medical grounds by the Competent Authority and the applicant has not chosen to challenge. Thereafter, the applicant was required by the respondents vide their letter dated 24.03.2015 to discharge his duties as instructed, for the Postman/MG examination held on 29.03.2015 but the applicant neither joined the assigned duties nor replied to such communication of the respondents.

11. In the aforesaid facts and circumstances, we

do not find violation of any rule in the order of the respondents dated 28.04.2015.

12. We, therefore find that the OA is devoid of merits and the same is also barred by limitation. Accordingly, the OA fails and is dismissed.

13. In view of the above, no order as to costs.

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

JD
03/01/20