

15

Central Administrative Tribunal
Principal Bench

O.A. No. 1162/2001

New Delhi this the 14th day of January, 2002

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

Harjeet Singh,
S/o late Shri D.S. Jagpal,
R/o C-505, Kidwai Nagar,
New Delhi-110023. ... Applicant.

(By Advocate Shri Harvir Singh)

Versus

1. The Secretary,
Ministry of Civil Aviation,
Government of India,
Safdarjung Airport,
New Delhi.
2. Director General (Civil Aviation),
Department of Civil Aviation,
Government of India,
Technical Centre,
Opposite Safdarjung Airport,
New Delhi-110003.
3. The Director of Airworthiness,
Delhi Region,
Department of Civil Aviation,
Government of India,
Safdarjung Airport,
New Delhi-110003.
4. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi.
5. The Civil Surgeon,
Dr. Ram Manohar Lohia Hospital,
New Delhi. ... Respondents.

(By Advocate Smt. Promila Safaya)

B.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has challenged the action and a number of orders issued by the respondents by which they have treated a period of 306 days of his absence from duty as 'Dies Non' which, according to him, is illegal and arbitrary. He has submitted that the order (Annexure A-7) has been passed on the advice of an external authority, that is, Dr. Ram Manohar Lohia (Dr. R.M.L.) Hospital, in which they have stated, inter alia, that "No necessity for grant of such a long period of leave in the past as per history and records and TMT status". The applicant has submitted that further to the impugned letter dated 12.7.2000 wherein, the respondents had treated 306 days as unauthorised leave, a corrigendum letter was issued only on 21.9.2000, in which ^{the} unauthorised period of leave was corrected as 285 days. He has also challenged the fact that the respondents have taken recovery of his salary treating this period as 'Dies Non'.

2. The applicant has stated that he is a heart patient and had been treated at Safdarjung Hospital during various periods in 1999, set out in the O.A. Shri Harvir Singh, learned counsel, has submitted that the applicant had been admitted to Intensive Care Unit (ICU) at Safdarjung Hospital, in May, 2000 and his condition was such that he was not in a position to join his duties on 11.8.2000. Later, he had got himself examined from Dr. R.M.L. Hospital where he was also admitted for treatment

YLC

in January, 2000 in ICU. In the background of these facts, learned counsel for the applicant has submitted that the medical opinion given by Dr. R.M.L. Hospital that there was no necessity for such long periods of leave in the past, is not justified. According to him, even if the applicant has been cured of his ailment and is better ^{later} ~~off~~, that would not necessarily mean that his period of absence from duty can be treated as unnecessary and, hence, unauthorised absence from duty for which the orders of 'Dies Non' have been issued by the respondents. He has submitted that he had been advised medical rest for various periods by the competent Doctors in CGHS and Safdarjung Hospital and the respondents relying on the advice of the Doctor from Dr. R.M.L. Hospital, that his long periods of leave previously ^{was} ~~were~~ not justified, is beyond the capacity of that Doctor. He has, however, not denied the fact that under the provisions of Rule 19 of the Central Civil Services (Leave) Rules, 1972, the respondents have the authority to ask the applicant to secure a second medical opinion and in this case from Dr. R.M.L. Hospital. He has submitted that the aforesaid orders treating the period of absence from duty as 'Dies Non' have been passed contrary to the provisions of FR 17-A as the applicant had not been given an opportunity of hearing in person or making a representation against these orders which are, therefore, against the principles of natural justice. He has relied on the orders issued under the DOP&T O.M. dated 23.5.1985. In the circumstances, the applicant has prayed for quashing of the aforesaid orders declaring the period of his absence

as 'Dies Non' with the declaration that the same has been spent on duty. He has also prayed that the medical bills incurred by him should be reimbursed and to consider him for grant of promotions and benefits under the Assured Career Progression (ACP) Scheme.

3. We have seen the replies filed on behalf of the respondents and heard Ms. Promila Safaya, learned counsel. She has submitted that the applicant who joined the office of the respondents on compassionate grounds on 21.12.1978, has been habitually and wilfully abstaining from the office and had been granted extra-ordinary leave within one year of his joining service. They have enclosed the record of service of the applicant, showing his absence, 'dies non' and extra-ordinary leave which has been granted to the applicant from 19.7.1992 to 23.4.2001, as on 22.6.2001, which shows that he has been absent for several months. They have also referred to the second medical examination and opinion submitted by Dr. R.M.L. Hospital. According to them, the opinion given by the doctor has been done after carrying out a thorough examination of the applicant. As the applicant had been admitted in Dr. R.M.L. Hospital in ICU for observation, they have submitted that the medical advice given by the doctor cannot be brushed aside as an administrative advice. On receipt of this advice from Dr. R.M.L. Hospital and taking into account his past record, namely, absence of 19 days from 8.2.1999 to 26.2.1999, 182 days from 12.3.1999 to 10.9.1999 and 84 days from 3.12.1999 to 25.2.2000, totalling 285 days and the period of absence of 93 days from

82

10.5.2000 to 10.8.2000, they proceeded to declare him on unauthorised absence and 'Dies Non' under the provisions of FR 17-A. However, during the hearing, there was no specific submission made by the learned counsel that before taking action under FR 17-A, a reasonable opportunity had been granted to the applicant which is a procedural requirement.

4. Shri Harvir Singh, learned counsel, had, however, stressed on the fact that the applicant should have been heard in person before the impugned order of 'Dies Non' had been passed against him without, however, referring to any representation made by the applicant for this purpose that he desired to be heard in person.

5. Paras 1 and 2 of Government of India's orders printed below FR 17-A in Swamy's Compilation of FR & SR (Part-I) (Fourteenth Edition) on pages 32 and 33 read as follows:

"(1) Reasonable opportunity to be given before invoking the penal provisions.- FR 17-A provides that a period of an unauthorised absence, in the category of cases mentioned therein, shall be deemed to cause an interruption or break in the service of the employees, unless otherwise decided by the competent authority for certain purposes. An order passed by the P&T authorities in the case of some of their employees, invoking FR 17-A was struck down by the Lucknow Bench of Allahabad High Court on the ground that issue of such an order without giving a reasonable opportunity of representation and being heard in person, if so desired, to the person concerned, would be against the principle of natural justice. The question of amending FR 17-A as also Rule 28 of the CCS (Pension) Rules and SR 200 is under consideration in consultation with the Ministry of Law.

(2) The above position is brought to the notice of all Ministries/Departments so that if there are occasions for invoking FR 17-A, etc., they may

YSC

keep in mind the procedural requirement that an order under FR 17-A, etc., should be preceded by extending to the person concerned a reasonable opportunity of representation and being heard in person if so desired by him/her".

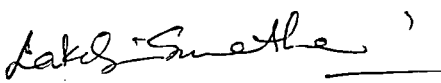
6. While we see merit in the submissions made by the respondents that the opinion of Dr. R.M.L. Hospital which has been given as a second medical opinion can be relied upon as it is an expert opinion of a Doctor and is not just ^{an} "administrative advice", however, the respondents could not ignore the procedural requirement as contained in the DOP&T O.M. dated 23.5.1985 reproduced above. It is for the competent authority to take an appropriate decision in the matter under FR 17-A but they ought to have given ^a reasonable opportunity of representation to the applicant which it appears has not been done in the present case. The respondents have stated in their reply filed on 30.7.2001, that on the basis of the opinion of Dr. R.M.L. Hospital and keeping the past record of service of the applicant, a declaration was made that he was on unauthorised absence and the period treated as 'Dies Non' as per the provisions of FR 17-A. In the facts and circumstances of the case, therefore, the orders issued by the respondents treating the absence of the applicant as unauthorised leave/Dies Non are quashed and set aside. However, liberty is granted to the respondents to proceed in the matter in accordance with law and the principles of natural justice, which action should be done as expeditiously as possible and in any case within four months from the date of receipt of a copy of this order.


Y².

7. Another question raised by the learned counsel for the applicant was that certain medical bills have not been reimbursed to the applicant. Having regard to the facts and circumstances of the case, as sufficient details of the outstanding bills and amounts have not been specified, it is open to the applicant to make a representation giving details of the same to the respondents for their consideration. If such a representation is received, the respondents shall consider the same and pass a reasoned and detail order in respect of each of the claims in accordance with the relevant rules and instructions.

8. With regard to the other claims of the applicant for promotion to the post of Senior Clerk or under the ACP Scheme, these were not referred to during the hearing by the learned counsel for the applicant. Apart from that, as they are not consequential claims arising from the main claims in the O.A., they are also barred under Rule 10 of the CAT (Procedure) Rules, 1987 and they are accordingly rejected.

9. In the result, O.A. is disposed of in terms of Paragraphs 6, 7 and 8 above. No order as to costs.


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)


(S.R. Adige)
Vice Chairman (A)

'SRD'