

Central Administrative Tribunal, Principal Bench

O.A. 1636/1999

(2)

New Delhi, this the 14th day of November, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

Head Constable Pramod Kumar
No.1107/PCR (PIS No.238550580),
New Delhi Zone / P C R
New Delhi

...Applicant

(By Advocate: None)

Versus

1. Commissioner of Police
Police Head Quarters
I.P.Estate, New Delhi

2. Addl. Commissioner of Police
(Operations)
New Delhi

3. Deputy Commissioner of Police
Police Control Room
Delhi

...Respondents

(By Advocate: Shri Harvir Singh)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J)

In this OA, the applicant has prayed for the following reliefs:-

- a) May quash and set aside the impugned order annexed at Annexure A/1, A/2 and A/3 to the Original Application;
- b) Direct the respondents to treat the 66 days of absence as Medical Leave, or as leave for any kind due/ commuted leave as per the CCS (CCA) Leave Rules;
- c) Direct the respondents to treat the period of absence of 66 days from 5.7.97 till 10.8.97 as days spent on duty for all purposes and intents; and
- d) May pass such order or further orders or directions deemed fit and proper in the facts and circumstances of the case in favour of the applicant."

2. Facts in brief are that applicant was served

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with a show-cause notice regarding unauthorised absence and was awarded the punishment of censure vide impugned order and his 66 days of absence from 5.6.97 to 9.8.97 was treated as dies-non on the basis of principle of "no work no pay." This punishment order was later confirmed by the appellate authority and the revisional authority. All these orders are impugned in this O.A.

3. Applicant has submitted that while he was deployed in the North Zone/Delhi Police during the year 1997, he proceeded on 7 days medical rest vide D.D. No.26 dated 15.5.97. As he was undergoing severe problems of health, he sent another request for further seven days medical rest which was recorded vide D.D. No.37, N.D.Zone/PCR dated 23.5.97 and since by that time also the condition of the applicant did not stabilise, he applied for another seven days leave on medical ground which was recorded vide D.D.No.17 dated 29.5.97. Thereafter the condition of the applicant further deteriorated and he could not resume duty till 9.8.97. Finally he joined duty on 10.8.97. It is stated that during the period 5.6.97 to 10.8.97, respondents issued four absentee notices out of which one was received by the wife of the applicant and one was acknowledged by the applicant himself.

4. After resumption of duty by the applicant on 10.8.97, he was served with a show cause notice as to why his conduct of not joining duty despite absentee notices, should not be censured and the absence period be decided as dies non on the principle of "no work no pay".

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Applicant filed a detailed representation to the said show cause notice and the respondents being not satisfied with the same, confirmed censure and treated 66 days of absence as dies non vide impugned order dated 3.2.98. To challenge this impugned order, applicant has submitted in the O.A. that during the period in question, he had continued to be under treatment of the same doctor of the CGHS dispensary on whose advice, he was earlier granted medical rest from 15.5.97 to 4.6.97 by three separate applications made by him and which have been sanctioned by the department itself. So rejection of his request for grant of medical leave pertaining to the period 15.5.97 to 9.8.97 supported by medical/fitness certificates, is quite arbitrary.

5. Respondents have contested the petition. They have submitted in their reply that applicant was required to take prior permission and get medical leave sanctioned before availing the same and since he has failed to do so, the punishment awarded to him is appropriate.

6. We have heard Shri Harvir Singh, learned counsel for the respondents. None appeared for the applicant.

7. It is clear from the reply filed by respondents that medical leave applied for by the applicant by his earlier three applications dated 15.5.97, 23.5.97 and 29.5.97 was duly sanctioned by the respondents. However, it is surprising to note that when the department itself has sanctioned his earlier leave applications on medical

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grounds but when due to his deteriorating health, he could not attend the office in continuation of leave granted to him upto 4.6.97, the respondents did not accept his request for further grant of leave from 5.6.97 to 9.8.97 despite the fact that medical certificate pertaining to that period also was issued by the same doctor who had issued earlier certificates to the applicant. Moreover, the respondents could not have forced to him to join duty unless he was declared fit for duty.

8. Learned counsel for the respondents argued that CCS (Leave) Rules provide that a person who wants to avail leave on medical grounds is required to give prior intimation to the department before proceeding on leave and as the applicant had not done so and also had not given satisfactory explanation to the absentee notices, so he was rightly punished. However, we find that this contention of learned counsel for respondents has no merits because applicant had continued to be on medical rest in the immediate preceding three weeks for which he had given prior intimation to the respondents and leave was sanctioned. Therefore, applicant's absence from duty for the period 5.6.97 to 9.8.97 duly supported by medical certificate of CGHS dispensary cannot be said to be unauthorised absence, particularly so when those medical certificates were also issued by the same doctor who had issued earlier certificates.

9. In view of the above discussion, we feel that stand taken by respondents to reject applicant's prayer

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for grant of leave for the period 5.6.97 to 9.8.97 on medical grounds, is unreasonable and arbitrary. We, therefore, allow this OA and quash the impugned orders dated 3.2.98 (Annexure A-1), 6.8.98 (Annexure A-2) and 3.5.99 (Annexure A-3) and direct the respondents to treat the period from 5.6.97 to 9.8.97 as medical leave or as leave of any kind due as per CCS Leave Rules. The leave period so regularised shall be treated as spent on duty for all purposes. Respondents shall complete the exercise of sanctioning medical leave to the applicant for the aforesaid period within a period of two months from the date of receipt of a copy of this order. No costs.

m.p.s
(M.P. Singh)

Member (A)

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(Kuldip Singh)

Member (J)

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