

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 220/96
T.A. No.

199

DATE OF DECISION 21.2.1997

Maha Singh

Petitioner

Shri Sant Lal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.K. Gupta

Advocate for the Respondent(s)

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The Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

The Hon'ble Mr. -

1. To be referred to the Reporter or not? *Y*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A. 228/96

New Delhi this the 21st day of February, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Maha Singh,
S/o Shri Sish Ram,
R/o Jharoda Kalan,
New Delhi.

...Applicant.

By Advocate Shri Sant Lal.

Versus

1. The Union of India, through
The Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan,
New Delhi.
2. The Director Postal Services (P),
O/O the Chief Postmaster General
Delhi Circle,
Meghdoott Bhawan,
New Delhi.
3. The Senior Supdt. of Post Offices,
New Delhi West Division,
Naraina,
New Delhi.

...Respondents.

By Advocate Shri M.K. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the Memos dated 3.1.1996 and 25.3.1992 whereby he had been imposed a penalty of 'Dies-Non' for the alleged absence from duty w.e.f. 10.4.1991 to 20.4.1991 and his appeal against the order has also been rejected. The applicant submits that for the period of absence from 10.4.1991 to 20.4.1991, he had duly supported the leave application by medical certificate but instead this period has been treated as 'Dies-Non'. He claims that this period should be treated as leave due as admissible under the rules on medical grounds.

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According to him, the earlier order dated 7.5.1991 treating this period as 'Dies-Non' has been set aside on appeal vide appellate order dated 5.3.1992 issued by Respondent 3, but the matter was again illegally reopened by Respondent 3 vide his letter dated 6.3.1992 who thereafter passed the impugned order dated 25.3.1992.

2. The applicant submits that he became sick on 10.4.1991 and the doctor under whom he was under treatment had recommended five days rest from 10.4.1991 to 14.10.1991. He states that he had _____ received a registered letter dated 12.4.1991 addressed to the Civil Surgeon, Dr. R.M.L. Hospital, on 19.4.1991, asking him to appear for the second medical opinion. He further states that his doctor, considering his health, further extended the period of rest upto 20.4.1991 and issued the medical certificate. He has, therefore, challenged the penalty order of 'Dies-Non' for the period of absence from 10.4.1991 to 20.4.1991. He also submits that the appellate authority had ~~however~~ set aside the order of 'Dies-Non' by order dated 28.2.1992 without any reservation which was, however, reopened by Respondent 3 by issuing him a show cause notice proposing to treat the period as 'Dies-Non'. The applicant made a representation dated 10.3.1992 in reply to the show cause notice which was, however, rejected by order dated 25.3.1992. The learned counsel for the applicant submits that the provisions of Rule 62 of the P&T Manual (Vol.III) are not applicable to his case. His contention is that the impugned orders are arbitrary, illegal and violative of the Articles 14 and 16 of the Constitution. Another appeal filed by him on 13.4.1992 was rejected on 3.1.1996. The learned counsel submits that since he was already on medical rest during which period he was asked to go for second medical opinion and he was also declared fit by the doctor on 20.4.1991, he joined duty on the same date. Therefore, there was no basis for the allegation that he has

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disobeyed the orders. He submits that reference to second medical opinion is an exception rather than the rule and there was no reason for sending his case for second medical opinion. In the circumstances, he has prayed that the impugned orders may be quashed and set aside and that he may be granted leave of the kind due on medical certificate for the period from 10.4.1991 to 20.4.1991 with consequential benefits.

3. The respondents have filed their reply and Shri M.K. Gupta, learned counsel for the respondents, has also been heard. They have stated that the applicant had applied for Earned Leave for 60 days w.e.f. 2.4.1991 to 31.5.1991 vide his application dated 13.3.1991 which was not sanctioned. Thereafter, the applicant submitted Medical Certificate for five days from 10.4.1991 to 14.4.1991 and again another Medical Certificate from 15.4.1991 to 20.4.1991. The learned counsel submits that since Medical and Fitness certificates were issued by a private doctor on 20.4.1991, he was referred to the Civil Surgeon, Dr. R.M.L. Hospital for second medical opinion, vide office order dated 12.4.1991, but he did not comply with the same. Therefore, they have submitted that the period of unauthorised absence from duty w.e.f. 10.4.1991 to 20.4.1991 was ordered to be treated as 'Dies-Non' vide office memo dated 7.5.1991 and on the /appeal, order dated 28.2.1992 was passed and fresh proceedings were initiated after issuing a show cause notice dated 6.3.1992. Thereafter, the impugned order dated 25.3.1992 was passed against which appeal has also been rejected.

4. After careful consideration of the pleadings and the submissions made by both the learned counsel for the parties, I find no grounds to interfere in the matter. The applicant has/ denied the fact that he did not submit himself for the second medical opinion as ordered by the respondents. I have also seen the original records submitted by the respondents. The applicant has himself admitted that the

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registered letter sent by the respondents asking him to appear before the Civil Surgeon, Dr. R.M.L. Hospital, N. Delhi was received by him on 19.4.1991 i.e. prior to the expiry of his own medical leave application upto 20.4.1991. However, he has not complied with the directions. In the application filed by the applicant seeking leave from 10.4.1991 to 20.4.1991 which is undated, he has stated that he is suffering from 'SO'. On this, the respondents had subsequently decided/the applicant to appear for second medical opinion on 12.4.1991. The medical certificates submitted by the applicant which are also on record show that they have been given by a private doctor. Under Rule 19(3) of the CCS (Leave) Rules, 1972, the authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date. The learned counsel for the applicant had submitted that since he had already submitted medical certificates along with his application, the respondents ought not to have sent him for second medical opinion. In the facts and circumstances of the case, therefore, the action of the respondents in seeking second medical opinion being in / rules which admittedly he has not complied with, does not appear to be illegal/arbitrary or unreasonable.

5. In the order dated 25.3.1992, it has been stated, *inter alia*, that the medical certificate for the period from 10.4.1991 to 14.4.1991 was submitted in time but the subsequent Medical Certificate for the period from 15.4.1991 to 20.4.1991 was submitted on 20.4.1991. According to the applicant also, he had submitted the medical certificate as well as the fitness certificate when he resumed duty on 22.4.1991. The competent authority, therefore, came to the conclusion that since he only produced certificates from ^aprivate doctor and remained absent from duty w.e.f. 10.4.1991 to 20.4.1991 to carry out some of his personal

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work for which he had applied for 60 days Earned Leave which had not been sanctioned, and he had also not reported to the Civil Surgeon, Dr. R.M.L. Hospital, for second medical opinion as he claimed that he was sick, as directed, the period of absence from duty was accordingly treated as 'Dies-Non'.

that

6. The applicant has, however, submitted / by the order passed by the respondents dated 5.3.1992, since the earlier memo dated 7.5.1991 treating the period from 10.4.1991 to 20.4.1991 as 'Dies-Non' has been set aside, the respondents could not have held de novo proceedings and passed the subsequent impugned order. The order of 5.3.1992 whereby it has been stated that the order dated 7.5.1991 has been set aside appears to be only a part order as seen from the order dated 28.2.1992 annexed to the respondents' reply.

/This order passed by the Director Postal Services (P) on the appeal filed by the applicant while setting aside the memo dated 7.5.1991 that had further ordered / de novo proceedings from the stage of giving the official an opportunity to give a representation be initiated and thereafter the case be decided on merits. Accordingly, show cause notice has been issued on 6.3.1992 to which he had given a reply which has also been considered by the competent authority in a detailed and speaking order which has been impugned in this case. Further, no prejudice has been caused to the applicant as he has been given reasonable opportunity of defending his case and there has been no violation of the principles of natural justice (See State Bank of Patiala & Others Vs. S.K. Sharma (1996(3) SCC 364)).

The appellate authority has also given reasons for rejecting his appeal against this order in which it has been stated that an impression has been created as if the official had already planned to go on leave when his application for 60 days was rejected, although he had proceeded on leave for a much lesser period. It has also been noted that the

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disciplinary authority had taken a decision to send him for second medical opinion which he did not comply with. In the facts and circumstances of the case mentioned above, it is quite clear that the respondents have given him reasonable opportunity of defending his case before passing the impugned order.

7. In the result, I find no merit in this application. It is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'