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Central Administrative Tribunal, Principal Bench

O.A.No.895/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 11th day of April, 1997

Dr. Jyoti Thandani
r/o C-30/4, Dilashad Garden
Delhi - 110 095.

.... Applicant

(By Ms. Rashmi Singla, Advocate)

Vs.

The Medical Superintendent
Lok Nayak Jai Parkash Narain Hospital
(L.N.J.P.Hospital)
New Delhi.

... Respondent

(By Shri Raj Singh, Advocate)

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The applicant is aggrieved by the order dated 2.11.1994 regarding her transfer and being relieved in her absence, and the withholding of her pay for more than 9 months. The applicant says that she was working in the L.N.J.P.Hospital as Civil Assistant Surgeon, Dental Grade-II when her order of transfer dated 5.8.1994 from L.N.J.P.Hospital to M.S.Civil Hospital, Rajpur Road was issued. The applicant submits that she proceeded on medical leave from 7.8.1994 and this leave lasted upto 1.11.1994 when she reported to Civil Hospital. She was treated as relieved from L.N.J.P.Hospital w.e.f. 10.8.1994. She made a representation for her back wages but it was not till 17.6.1995 that her Last Pay Certificate was issued from the L.N.J.P.N.Hospital. She has now come before the Tribunal seeking direction to the respondent to pay interest on the amount due to her since August, 1994 at the rate of 18%. According to her own calculation such interest would come to Rs.14,400/-

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2. The respondent deny the above allegations. As per the reply statement the applicant on coming to know of her transfer from L.N.J.P.Hospital to Civil Hospital absented from duty w.e.f.8.8.1994 without any intimation and permission. An attempt

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was made to serve the transfer orders at her residential address but the communication was returned with the remarks "UNCLAIMED". It is alleged that the applicant continued to make efforts to have the transfer order cancelled but ultimately joined the Civil Hospital, Rajpur Road on 2.11.1994. She was required to handover charge of stores of the dental department which she did not do and in consequence the Last Pay Certificate(LPC) could not be issued by L.N.J.P.Hospital. It was only after she completed the formalities that the LPC was issued on 17.6.1995. Thereafter, the arrears of pay, etc. could be released. According to the respondents, there was no delay whatsoever which would justify her claim for grant of interest.

3. I have heard the counsel on both sides. The learned counsel for the applicant submits that firstly the respondent had no right to treat her relieved from L.N.J.P.Hospital when she was on medical leave. Further more, the applicant was not the only surgeon in the dental department; there were other seniors including her Head of Department and therefore, there was no question of handing over of any stores by her. The medical leave was also ultimately ^{sanctioned} in the circumstances, withholding of pay and allowances was entirely due to the respondent's inaction and hence the claim for interest is justified. The learned counsel for the respondent on the other hand submits that the medical certificate and application were submitted at a later stage. The medical certificate was also not in order and hence it took time to sanction leave. However, leave was sanctioned by taking a sympathetic view. Since the applicant did not handover the stores the LPC could not be issued but the same was done soon after the needful was done by the applicant.

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4. I have considered the matter. The proximity of the date of issue of the order of transfer and the proceeding on leave without prior intimation could be indicative of a connection between the two events even though this is denied by the applicant. The fact nevertheless remains that the applicant proceeded on medical leave without submitting any formal leave application and it was only later after sometime that medical leave application with medical certificate was submitted.

5. The learned counsel for the applicant argues that the applicant had already been under medical advice w.e.f. 02.08.1994 to take three days bed rest. However, on her own statement, the applicant proceeded on medical ground from 7.8.1994. The medical certificate in support of the same was also submitted after she joined her duties at Civil Hospital, Raj Pur Road. The leave was sanctioned ultimately on 15.4.1995. As per her statement, she was given her dues on 12.6.1995 after she had served a legal notice on Medical Superintendent.

6. The whole basis for the claim of the applicant is that she was treated as relieved from L.N.J.P. Hospital during her absence in contravention of the service rules and that thereafter her dues were not paid even after she joined at Civil Hospital on account of flimsy reasons, such as handing over of stores. I find however firstly that nothing has been shown by the applicant as to which service rules are contravened by the issue of orders during the leave period of Government employee ^{or} ~~and the government~~ employee to join the new posting either immediately ^{on} or the expiry of the leave. A Government employee on long leave otherwise liable to transfer has no absolute lien on the original post and he could be transferred out in the same way as if he was not on leave during that period. Secondly, the medical certificate in support of the medical leave was submitted after the applicant

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joined at Civil Hospital, Raj Pur Road and her leave was also sanctioned only in April, 1995. In the facts and circumstances, I find that there has been no undue delay in the payment of her leave salary, etc. which was given to her in June, 1995. There may be some delay on the part of the authorities of Civil Hospital as well as L.N.J.P. Hospital which is also partly attributable to her late reporting at Civil Hospital and her late submission of medical certificate in support of her medical leave. This delay cannot therefore be made the basis for a claim of interest on delayed payment.

7. In the facts and circumstances of the case, I find no adequate case has been made out ^{for} grant of interest on delayed payments. Accordingly, the OA is dismissed. No costs.

/rao/

R.K. Ahooja
(R.K. AHOOJA)
MEMBER(A)