

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 859 OF 1994

New Delhi, the 22nd Day of November, 1994

Hon'ble Mr. B.K.Singh, Member(A)

Shri Vikram Singh
S/o Shri Maroo Singh
Employed as Assistant Accounts Officer
in the office of D.P.D.O., Gurgaon(Haryana)
and Resident of Village & P.O. Painga
(Modinagar), Dist. Ghaziabad (U.P.)
(Through Shri N.S.Verma, Advocate)

... Applicant

Versus

1. Union of India, through

The Secretary
Govt. of India
Ministry of Defence (Finance)
New Delhi.

2. The Controller General of Defence Accounts
West Block-V, R.K.Puram
New Delhi.

3. The Controller of Defence Accounts
(Pension Disbursement)
Meerut Cantt.

... Respondents

O R D E R

Hon'ble Mr. B.K.Singh, Member(A)

1. This OA 859 of 1994 has been filed against Annexure A-2 since no order has been passed even after 6 months on the representation filed for regularisation of ^{the applicant's} absence from 16.3.1991 to 17.5.1993.
2. The admitted facts of the case are that the applicant is an assistant accounts officer in the Defence Accounts Department under the Controller General of Defence Accounts. The applicant has an all India transfer liability and he was transferred from

Gurgaon(Haryana) to Srinagar on 11.6.1993. He did not join the new station and submitted medical certificates. Under CCS(Leave) Rules 1972, grant of leave on medical certificates is regulated under rule 19 which reads as follows:

* 19. (Grant of leave on medical certificate to gazetted and non-gazetted Government servants)

(1) An application for leave on medical certificates made by -

(i) a Gazetted Government servant, shall be accompanied by a medical certificate in Form 3 given by an Authorised Medical Attendant;

(ii) a non-gazetted Government servant, shall be accompanied by a medical certificate in Form 4 given by an Authorised Medical Attendant or a registered Medical Practitioner;

defining as clearly as possible the nature and probable duration of illness.

NOTE- In the case of non-gazetted Government servant, a certificate given by a registered Ayurvedic, Unani or Homoeopathic medical practitioner or by a registered Dentist in the case of Dental ailments or by an honorary medical officer may also be accepted provided such certificate is accepted for the same purpose in respect of its own employees by the Government of the state in which the Central Government servant falls ill or to which he proceeds for treatment.

(2) A Medical Officer shall not recommend the grant of leave in any case in which there appears to be no reasonable prospect that the Government servant concerned will ever be fit to resume his duties and in such case, the opinion that the Government servant is permanently unfit for Government service shall be recorded in the medical certificate.

(3) 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.

(4) It shall be the duty of the Government Medical Officer referred to in sub-rule(3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose he may either require the applicant to appear himself or before a medical officer nominated by himself.

(5) The grant of medical certificate under this rule does not in itself confer upon the Government servant any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.

(6) The authority competent to grant leave may, in its discretion, waive the production of a medical certificate in case of an application for leave for a period not exceeding three days at a time. Such leave shall not, however, be treated as leave on medical certificate and shall be debited against leave other than leave on medical grounds."

3. The extracted rules above indicate that in case of a gazetted Government servant, the leave application has to be accompanied by a medical certificate in Form-3 duly signed by an authorised medical attendant. Admittedly, the applicant is a gazetted Government servant and he will be governed by Rule 19(1). The authority to grant leave on receipt of the application in Form-3 may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of Civil Surgeon or Staff Surgeon, to have the applicant medically examined at the earliest possible date, for it shall be the duty of the Government Medical Officer

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referred to in sub-rule (3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose, he may either require the applicant to appear before him or before a Medical Officer nominated by himself. Rule 19(5) lays down that the grant of medical certificate does not in itself confer upon a Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and the officer will not proceed on leave till the competent authority sanctions the leave and communicates his orders in that regard.

4. It is also admitted that some of the medical certificates were submitted by private doctors based in Modinagar who were not authorised medical attendants. As stated above, mere filing of medical certificates without the sanction of the leave prayed for does not confer any right on a Government servant to proceed on leave. The spirit is that the medical leave or earned leave cannot be claimed as a matter of right. Medical leave to be applied in Form-3 has to be accompanied by a certificate from duly authorised medical attendant and that the competent authority to sanction the leave has to apply his mind and it is only after the competent authority sanctions the leave and communicates the same to concerned Government servant that he can proceed on leave, otherwise not. Sanction and communication of leave is a must except in emergent situations where one suddenly falls ill or suffers a heart attack or any other serious ailment as a result of which he/she is to be admitted in the hospital. Only in such cases, the conditions laid down under Rule 19 of the CCS (Leave) Rules can be waived by the competent authority.

5. It is also clear from the perusal of the records that neither the leave was sanctioned nor had he applied in Form-3

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in anticipation of his proceeding on leave.

Relief(s) sought

6. He has prayed that the Tribunal should issue appropriate directions or orders to the respondents to regularise his absence from 16.3.1991 to 17.5.1993 and to pay him leave salary for the said period. He has prayed for costs being awarded to him. A notice was issued to the respondents who filed their reply and opposed the application and grant of relief(s) prayed for. I heard the Learned Counsel Shri K.C. Sharma for the respondents (none was present on behalf of the applicant) and he argued that the applicant has been charge-sheeted for proceeding on leave without any sanction of the competent authority. He drew the attention of the court to the memo of charges served on the applicant at Annexure R-7 dt. 22.7.1992 which has an article of charges. The charges read as follows:

" Statement of Article of charges framed against Shri Vikram Singh, AAO(R.No.345).

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Article of charges

That the said Shri Vikram Singh, AAO(R.No.345 posted to the office of the U.P.D.O. Srinagar under the organisation of C.D.A.(PD) Meerut on promotion to AO's grade, was relieved of his duties by the C.D.A., New Delhi on 15.3.91(AN), but Shri Vikram Singh has not reported in D.P.D.O. Srinagar so far. Shri Vikram Singh was issued several communications/directions at his home address by this office/C.G.O.A office to resume his duties immediately, but Shri Vikram Singh has neither joined his duties at U.P.D.O. Srinagar nor he has sent any communication/Medical Certificate till date in support of his continued unauthorised absence from duties.

Thus Shri Vikram Singh A.A.O.is, therefore, charged for wilful and unauthorised absence from duty wif 16.3.91 without any valid reasons and for disobedience of orders of superior authority. Thereby Shri Vikram



Singh has behaved in a manner unbecoming of a Govt. servant and displayed gross lack of devotion to duty, contravening the provisions of Rule 3(1)(ii) (iii) of C.C.S.(Conduct) Rules 1964."

7. The learned counsel also quoted provisions of C.C.S.(Conduct) Rules 1965 in which actions for unauthorised absence from duty or for ~~overstayal~~ ^{overstayal} of leave have been indicated. This is annexure R.VIII annexed with the counter reply. Undoubtedly, the applicant is facing an enquiry on the charge of unauthorised absence. The Hon'ble Supreme Court, in the case of Gujarat Electricity Board Vs. A.K. Sungomal AIR 1985 SC 1433 has laid down that transfer of an employee from one place to another is a condition of service and the employee has no choice in the matter. Whenever a public servant is transferred, he must comply with the order. But if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant MUST carry out the order of transfer. In the absence of any stay of the transfer order, the public servant has no justification to avoid or evade the transfer order merely on grounds of his difficulty in moving from one place to another. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case."The respondent lost his service as he as he refused to comply with the order of transfer from one place to another." In the case of B.Varedapa V. state of Karnataka (66) 4WCC, the Hon'ble Supreme Court held that transfer of a government servant is an ordinary incident of service and therefore, it does not result in any alteration of any of the conditions of service to his disadvantage.

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8. The law has been fully clarified in the case of Silpy ^{VS.} Bose Vs. the state of Bihar 1991 (Lab.) 1C (SC) 360. The Hon'ble Supreme Court held that court should not interfere with an order of transfer either on administrative grounds or in public interest or in the exigencies of service.

9. By not obeying the transfer order, the applicant has exposed himself to disciplinary proceedings and the foundation of the disciplinary proceedings relates to the charge of his unauthorised absence. The question of regularisation of his leave will arise only when the disciplinary proceedings are concluded and the competent authority takes a decision to condone the commissions and commissions on the part of the applicant in proceeding on leave without the sanction from the competent authority. No one can claim medical or earned leave as a matter of right. One has to apply for leave and it is the prerogative of the competent authority, in his discretion, to sanction or refuse leave. Unless there is a specific order indicating sanction of leave, one cannot anticipate the sanction and proceed on leave. If one does this, one exposes himself to charge of unauthorised absence.

For unauthorised absence ^{he} has been charged in the form of article of charges and he is facing a departmental enquiry on this count. He will have to wait till the enquiry is concluded and the question of his unauthorised absence is decided by the competent authority. If the decision goes in his favour and the genuineness of medical certificates is not doubted, his leave will be regularised accordingly. If leave is available in his leave account and once it is sanctioned, he will get leave salary and other allowances due to him. The application thus is premature since courts are not expected to interfere

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with disciplinary proceedings or pass any interlocutory orders in regard to such proceedings. The application is thus dismissed as premature, leaving the parties to bear their own costs.


27/11/74
(B.K.SINGH)
MEMBER(A)