

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1368/2000

New Delhi this the 29th day of March, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Dr. Vishwala Naidu
R/O Plot No.2 Taj Nagari
Opp. Shanti Manglik Hospital
Agra Cantt. 28001.

... Applicant

(By Mr. C. Mohan Rao, Advocate)

-versus-

1. Union of India through the
Secretary,
Ministry of Defence
South Block
New Delhi

2. The Commanding Officer
Military Hospital Agra Cantonment
Agra. ... Respondents

(By Ms. Protima Gupta, Advocate)

O R D E R (ORAL)

Shri S. A.T.Rizvi, M(A):-

The applicant, a Whole Time Lady Medical Officer (Family Welfare), prays for directions to the respondents to treat the period from 6.7.1992 to 27.5.1993 as spent on duty and accordingly pay to her the salary and allowances and other consequential benefits in respect of the aforesaid period. The other prayer made is for treating the entire period from 7.5.1990 to 5.7.1992 as the period of Extraordinary Leave on medical ground and accordingly to allow payment to the applicant of annual increments for the period from 1.4.1990 to 1.4.1997.

[Signature]

2. We have heard the learned counsel of either side in great detail about the manner in which the applicant has proceeded on leave and the circumstances which have led to the passing of the order dated 5.6.1993 by the respondents by which the applicant has been granted 1115 days Extraordinary Leave without pay and allowances for the period from 7.5.1990 to 26.5.1993. We have also perused the material placed on record.

3. The story begins with the application dated 26.4.1990 made by the applicant for grant of Extraordinary Leave for reasons other than medical reasons. Since she had not clearly specified the reasons for proceeding on Extraordinary Leave, the respondents asked her to provide reasons before the sanction of leave could be considered. This was done by the respondents by their letter of 4.5.1990. The applicant gave her reasons in her letter of 7.5.1990 placed at page 13 of the reply. We have perused the same and find that no medical reason has been disclosed for the applicant proceeding on Extraordinary Leave. However, the applicant proceeded on leave from the same date i.e. 7.5.1990 before the aforesaid leave was formally sanctioned. The applicant, no doubt, claims that the leave was sanctioned by the then Commanding Officer but she has nothing to show by way of an order, if any, passed by the said CO. The respondents have denied sanction of

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leave to the applicant in the manner stated by her. The matter remained under consideration. Ultimately, the applicant reported back for duty, after availing leave even though without prior sanction, on 6.7.1992. She was not allowed to join and instead the respondents issued a show cause on 24.11.1992 to which a reply was furnished by the applicant on 8.2.1993.

4. We have carefully perused the applicant's reply aforesaid. Towards the end of her reply, the applicant has regretted the lapses committed by her and has asked for a lenient view being taken by the respondents. In the same letter again no medical ground has been pleaded by the applicant. The respondents kept the matter under further consideration and finally allowed the applicant to resume duty by their order of 26.5.1993. Thereupon the applicant resumed duty with effect from 27.5.1993. After hearing the parties, we are clear in our mind that the medical ground pleaded by the applicant hardly ever existed in the context of the Extraordinary Leave availed of by the applicant. We also find that the applicant proceeded on Extraordinary Leave without formal sanction. All the same, the respondents have shown due consideration by allowing her to join her duties with effect from 27.5.1993 though the leave sanctioned by them for the aforesaid period has been so sanctioned without pay and allowances. We see nothing wrong in the order made by the respondents for the simple reason that the

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medical ground as pleaded never existed and, therefore, need not have been taken into account by them.

5. In-so-far as the prayers made by the applicant are concerned, the learned counsel appearing for the applicant, does not wish to press the prayer regarding grant of annual increments. He is keen, however, that the other prayer which is for treating the period from 6.7.1992 to 27.5.1993 should be considered as spent on duty and consequential benefits given to her, on the ground that the applicant had in fact reported for duty on 6.7.1992 but was allowed to resume duties only with effect from 27.5.1993. For this delay, the learned counsel pleads, the applicant cannot be held responsible. We have gone into this aspect carefully and having regard to the general conduct of the applicant in this case, we are inclined to concede the applicant's prayer only partially and in the following terms.

6. It is admitted that the applicant reported for duty on 6.7.1992. It is also admitted that the respondents issued show cause only on 24.11.1992. Thus the respondents have taken more than four months to issue a show cause notice. We find this period of time as unreasonable and the benefit or advantage for this period should accrue to the applicant. Similarly after receiving the applicant's explanation on 8.2.1993, the respondents have finally allowed the applicant to resume duty on 26.5.1993 thus spending

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more than 3-1/2 months in the process. This too should have been avoided. For this period also, the applicant should be considered for grant of benefit in terms of pay and allowances etc. The intervening period extending from 24.11.1992 to 8.2.1993 can be attributed to the applicant, who in the circumstances, could have sent back a reply soon enough without having to hold on for another over 2 months. The kind of reply that she has given could in any case have been given much earlier and far too promptly. Thus she is also responsible for delay for the aforesaid period.

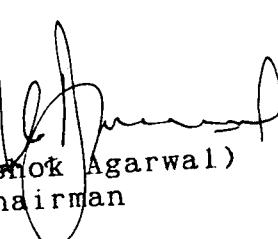
7. We have now to consider the quantum of benefit that could flow to the applicant in respect of the period from 6.7.1992 to 24.11.1992 and thereafter from 8.2.1993 to 26.5.1993. Having regard to the facts and circumstances of this case, we find that it will be in the fitness of things as well as just and proper to direct the respondents to make payment of salary and allowances to the applicant, without interest, for the aforesaid periods at the rate of 50% of what would have been payable otherwise. We direct accordingly.

8. This OA is disposed in the aforesaid terms.

No costs.



(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

/sns/