



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No. 060/328/2019

(Order reserved on 28.01.2021)

Chandigarh, this the 2nd day of February, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Deo Narayan Prasad, Assistant Director (E) Doordarshan Kendra, R/o H. No. 42-A, Doordarshan Staff Quarters, Sector 42-A, Chandigarh, Aged 58 years, Grade-A, Pin-160 036.

.....Applicant

By Advocate: Ms. Monika Thakur

Versus

1. Deputy Director Doordarshan Kendra, Sector 37-B, Chandigarh-160 036.
2. Union of India, through Secretary, Union Ministry of Information and Broadcasting, 12, Sunehri Bagh Road, New Delhi-110 001.

.....Respondents

By Advocate: Mr. Sanjay Goyal

ORDER

AJANTA DAYALAN, Member (A):

1. The present OA has been filed by the applicant Deo Narayan Prasad seeking setting aside of order dated 08.01.2019 (Annexure A-1) whereby medical leave of the applicant for intermittent periods from 08.06.2018 to 11.11.2018 totalling 94 days has been rejected on the ground that the medical certificates provided by him are from private authorized medical attendants whereas he is a gazetted officer living in CGHS



covered area and therefore, as per rules, he could only produce medical certificates given by CGHS hospital or any other doctor working in Government hospital to avail the facility of commuted leave.

2. The facts of the case are largely undisputed. The applicant joined service in All India Radio in 1984 as Engineering Assistant. He was promoted and finally reached the level of Assistant Engineer and was working as such till May 2018. In May 2018, vide order dated 30.05.2018, he was promoted to Junior Time Scale of Indian Broadcasting Engineers Service (IBES). Vide this order, as many as 323 employees including the applicant were promoted. The applicant was posted on promotion to Hisar. The Heads of Offices were to relieve the concerned officers to enable them to assume charge at the new place of posting. Accordingly, the applicant was relieved on 08.06.2018 vide order dated 07.06.2018 (Annexure A-3). The applicant made an application on 08.06.2018 (Annexure A-2) for grant of earned leave from 05.06.2018 to 07.06.2018 due to ill health. In this application, he also sought medical leave from 08.06.2018 to 14.06.2018. He further sought not to relieve him on 08.06.2018 till he joins back. The applicant remained on intermittent leave and represented for his posting at Chandigarh against a vacant post. He finally joined at Chandigarh on 20.11.2018 vide order dated 16.11.2018 (Annexure A-4).

3. Thus, the applicant was relieved from Chandigarh on 08.06.2018 to join on promotion as Assistant Director at Hisar. He, however, continued on leave and made a representation for



his posting at Chandigarh and joined at Chandigarh on 20.11.2018.

4. The matter relates to the intermittent period from 08.06.2018 to 19.11.2018. During this period, the applicant was on earned leave as well as on medical leave. The medical leave period applied for is as under:-

08.06.2018 to 14.06.2018	7 days
01.07.2018 to 21.07.2018	21 days
10.08.2018 to 16.08.2018	7 days
17.08.2018 to 26.08.2018	10 days
08.09.2018 to 28.09.2018	21 days
10.10.2018 to 30.10.2018	21 days
05.11.2018 to 11.11.2018	7 days
Total days	94 days

5. The case of the applicant is that the medical leave applied for by him has not been granted by the respondent department as the medical certificate is by a private authorized medical attendant. This is on the ground that he lives in a CGHS covered area and as per rules, he can produce medical certificate by a CGHS hospital or by any doctor working in a Government hospital to avail the facility of commuted leave.

6. According to the applicant, he was relieved on 08.06.2018 and re-joined back on 20.11.2018 making the total leave period of 168 days. Out of this, 74 days' leave is adjusted against earned leave and the rest of the period of 94 days should be adjusted against medical leave. The applicant was already relieved on 08.06.2018 from Chandigarh. As such, rules and regulations of Chandigarh Doordarshan Kendra would not be applicable to him. The applicant also pleads that he has never applied for medical reimbursement earlier and he does not have



a CGHS card. Further, he is due to retire on 31.01.2021 and his pensionary benefits will be held up for non-finalization of this period of absence. As such, he pleads that his case be considered sympathetically and the medical leave applied be sanctioned.

7. The respondents have contested the claim of the applicant. They have stated that the applicant applied for three days' earned leave from 05.06.2018 to 07.06.2018 on the ground of "urgent work related to transfer" and not on health complications/Hypertension and fever as stated in the OA. However, on receipt of email from Hisar office of the respondents, relieving orders of the applicant were issued and he was relieved on 08.06.2018 to join at Hisar on his promotion. Even though the applicant was due to join his duties on 08.06.2018, he did not do so, but sent an email on 08.06.2018 from cyber café and not from his personal email ID even though the officials are supposed to use their personal email ID for communication with their office and the applicant's own email is registered with the respondent department. In this email, he enclosed copy of the medical certificate from Khullar's Clinic and Clinical Lab, Sector 44-A, Chandigarh in a format that is prescribed for non-gazetted officers whereas the applicant is a Class II gazette officer since 1998. Therefore, this medical certificate was invalid as per Civil Services (Medical Attendance) Rules 1994 under which the applicant is governed.

8. The respondents have further submitted that after the applicant's joining on 20.11.2018, he was supposed to settle



his leave period immediately after joining. But, the applicant did not do so deliberately and requested for time to search for medical report/certificates at his residence. The respondent department vide letters dated 26.11.2018 and 29.11.2018 (Annexures R-9 and R-10), asked the applicant to settle his leave period. It was only after several verbal instructions and reminders that the applicant submitted leave application on 04.01.2019 for 94 days of medical leave supported with medical certificate issued by Khullar Healthcare Centre, Sector 44-A Chandigarh (Annexure R-11). However, these certificates produced by the applicant were found to be only medical rest certificates and not medical fitness certificates. Besides, the applicant at the time of illness was residing in the CGHS covered city and was covered by CGHS rules. Therefore, being Class I gazetted officer, both medical rest cum fitness certificates are mandatorily required from Government Hospital/CGHS Dispensary/CGHS empanelled hospital as per CS(MA) Rules.

9. The respondents have also alleged that the applicant was well aware of his relieving as per his email dated 08.06.2018 (Annexure R-3) and hence, he intentionally got the medical certificate issued w.e.f. 08.06.2018.

10. The respondents have further stated that the applicant was residing in staff quarter at Sector 42-A, Chandigarh on 08.06.2018 and he was governed by CGHS Rules. As such, his contention that these rules do not apply to him as he was transferred and relieved from Chandigarh is totally wrong and baseless.



11. The respondents have also stated that earned leave and medical leave have been sandwiched intentionally for multiple spells. Only one medical fitness certificate dated 12.11.2018 for leave from 05.11.2018 to 11.11.2018 has been submitted and that too is from an Authorized Medical Attendant (AMA). The respondents have emphasized that for such long period of illness, the applicant did not go to or consult any Government hospital or specialized private hospital of the city. Rather, he preferred to go to AMA for managing his medical certificates to settle his leave account.
12. The respondents have further stated that after joining at Chandigarh, the applicant went on leave on 22.11.2018, 05.12.2018, 06.12.2018 to 24.12.2018, 25.12.2018, 26.12.2018 to 02.01.2019 mostly on medical ground. But this time, the applicant went to Government Hospital i.e. PGIMER Chandigarh and not to AMA/private doctor. The respondents have stated that this shows the intention of the applicant that when he was actually ill, he went to Government hospital or otherwise he preferred to go to AMA for treatment time and again during the period from June to November 2018.
13. In view of the above, the respondents have concluded that no case is made out for granting relief to the applicant.
14. I have heard the opposing counsels and have also gone through the pleadings of the case. I have also given my thoughtful consideration to the entire matter.



15. I observe that the applicant was transferred on promotion from Chandigarh to Hisar vide order dated 30.05.2018. He was relieved on 08.06.2018. Subsequently, on his request, he was allowed to join back at Chandigarh on promotion vide order dated 16.11.2018 and he joined on 20.11.2018. However, during whole of this period from 08.06.2018 to 19.11.2018, he remained absent from duty totaling around 168 days. Of these, the period of 94 days in intermittent spells was applied for by the applicant for grant of medical leave to him. However, the certificates given by him are not from Government hospital or any Government doctor or CGHS. He has chosen to give medical certificate only of AMA. Further, in most cases, though there are medical rest certificates but there are no fitness certificates.

16. The plea of the applicant that as he was already relieved from Chandigarh, he is not covered by CS(MA) Rules applying to CGHS covered cities, is not made out. It is observed that even though the applicant was relieved from Chandigarh, he never joined at Hisar on promotion. Even the applicant himself is not claiming that he ever travelled to Hisar. The applicant has remained absent right from his relieving till his date of joining at Chandigarh. He has not taken any prior approval or sanction of any type of leave - whether earned leave or medical leave. He had to be repeatedly told by the respondent department to regularize his period of absence. Finally, in consequence thereof, he has applied for medical leave with some attached certificates only in January 2019. This fact is admitted by the applicant



himself. During arguments when the applicant himself was present, he admitted that he did not apply for leave earlier to January 2019. Thus, a senior Group A officer nearing retirement, has behaved in a very irresponsible manner by remaining absent for over five months without prior sanction of leave and on one ground or the other. In fact, he has joined back only subsequent to change of his transfer order from Hisar back to his own choice place of posting in Chandigarh. This is also despite the fact that Hisar is not very far from Chandigarh and is only about 245 kms away. This behavior of the applicant is not appreciable.

17. Further, I note that in the OA, the applicant has attached Annexure A-2 which is his leave dated 08.06.2018. In this leave application, he has stated that he was on earned leave from 05.06.2018 to 07.06.2018 "due to suffering from ill health like BP, Hypertension and fever". However, the respondents in their reply have categorically stated that in his leave application for 05.06.2018 to 07.06.2018 (which is also the period immediately after issue of transfer order on promotion), the ground for leave given by him is "urgent work related to transfer". This leave application is dated 04.06.2018 and is attached as Annexure R-2. A perusal of this shows that the reason recorded here is in Hindi which translates to somewhat what the respondents are stating. As leave application of 08.06.2018 is addressed to respondent department, the applicant is misrepresenting before the respondents. As this fact is also categorically mentioned in the OA, the applicant has also



misrepresented before this Tribunal. A person who comes for equity must come with clean hands, is a settled law and as such, the applicant does not deserve even equity - what to talk of sympathy.

18. Even otherwise. when the applicant has been continuously absent from duty for as many as 168 days (as worked out by the applicant himself), his applying for medical leave in seven different intermittent spells and sandwiching these spells with earned leave in-between makes the intention of the applicant quite clear in our mind. Basically, he wished to remain away from duty and not to join at Hisar. The fact that after joining at Chandigarh, he has been on leave but this time he has submitted certificates from PGI throws further doubt on his medical claims. His earlier medical claims are supported by medical certificates from AMAs only and not from Government hospital. In any case, these certificates are not supported by medical fitness certificates.

19. Further, I observe that the medical certificates have been given by the applicant to the department only in January 2019 - that is well after all these intermittent medical leave period have been over. This has denied the respondent department to have a second medical opinion regarding the application which would be their right especially in case of long absence like this one. The fact that the applicant has submitted all these medical certificates only much later after expiry of the periods for which leave is applied for and in January 2019, is admitted by the applicant himself who was present during the



hearing of the case. It is also borne out by the pleadings in the case.

20. In his rejoinder, the applicant has also alleged that refusal of leave is not by the competent authority which has to be sanctioned by the Director or an officer to whom the powers have been delegated by the Director. He has also stated that he is in the same grade as respondent No. 1 that is Deputy Director, Doordarshan Kendra and as such, respondent No. 1 is not the competent authority to refuse leave to the applicant. Here, I observe that such pleading about competence was never taken by the applicant in his OA. Besides, the respondents in their reply, have made it very clear that authority that is respondent No. 1 is competent in this regard. She is working as Head of office of the Kendra and is a controlling officer in respect of staff working in Doordarshan Kendra Chandigarh. Further, she is in the Grade Pay of Rs. 6600/- whereas the applicant is in the Grade Pay of Rs. 5400/-. As such, I find that the statement of the applicant that respondent No. 1 is "in the same grade" as him is not factually correct. In any case, I observe that the applicant is not objecting when the leave is sanctioned by the same officer, but chooses to object only when the leave is refused.

21. I also observe that in his rejoinder, the applicant is alleging harassment. However, I note that he has not made any party as respondent by name. Hence, no case of malafide can be made out by him at this stage now.



22. Further, I observe that in his over 168 days' absence without sanction of leave, the applicant has applied for medical leave on seven occasions totaling 94 days. However, from the perusal of the medical certificates given by him, I notice that in this five months period, the applicant has suffered from Typhoid, Jaundice, fever, UTI (twice) and Lumber Spondolysis with Cervical Spondolysis. However, as admitted by the applicant himself, there was no hospitalization involved. Thus, the applicant suffered for five different diseases on these seven occasions requiring over 4-5 months absence from duty, but there was no hospitalization. This throws doubt on the genuineness of the medical certificates produced by the applicant. In any case, in such a situation, the competent authority should have had an opportunity for second medical opinion which has been denied to them by the applicant by the submission of certificates much after the expiry of the whole period of absence and that too on repeated references from the department.

23. Thus, in short, on his transfer on promotion to Hisar and his relieving from Chandigarh on 08.06.2018, the applicant has continuously remained absent till his joining back at Chandigarh on 20.11.2018. For this period of absence, he has applied for medical leave for seven different spells. The medical certificates have all been taken from AMA and not from any Government hospital or from Government doctor. Even though medical rest certificates have been annexed, no medical fitness certificates have been annexed with the leave applications. Most



importantly, even these medical certificates have been produced only in January 2019 - that is well after the expiry of the periods now sought to be regularized. Sandwiching of periods of medical leave with earned leave with this type of frequency as seen in this case throws serious doubt on the genuineness of the case. Besides, in these five months, he has statedly suffered from five different diseases – Typhoid, Jaundice, Fever, UTI (twice) and L/S with C/S, but there was no hospitalization. He has remained away from duty for over five months. But, the applicant has denied the respondents' right to second medical opinion by late submission of medical certificates. The certificates are also not in the format required under CS(MA) Rules, 1944 for the gazette officers. The applicant is also misrepresenting facts before this Tribunal as discussed above.

24. In view of all above, I am of clear opinion that the respondents have acted rightly in rejecting his claim for medical leave. OA is therefore dismissed being devoid of merits. However, there shall be no order as to costs.

**(Ajanta Dayalan)
Member (A)**

Place: Chandigarh
Dated: February 2nd, 2021
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