

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 2524/1990

Date of decision: 17.07.1992

Shri Surendra Sharma

...Applicant

Vs.

Director General of Works,
CPWD and Another

...Respondents

For the Applicant

...Shri D.R. Gupta,
Counsel

For the Respondents

...Shri M.L. Verma,
Counsel

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed
to see the Judgment? *Ans*

2. To be referred to the Reporters or not? *Ans*

JUDGMENT
(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The short point for consideration is whether the
respondents were within their rights to treat the alleged
unauthorised absence of the applicant from duty for the
period from 1.1.1983 to 25.10.1987 as dies non.

2. We have gone through the records of the case
carefully and have heard the learned counsel of both parties.
The applicant entered Government service in the CPWD in 1964
as Junior Engineer. He was promoted as Assistant Engineer in
1972 and he continued as such till he retired from Government

service, on attaining the age of 58 years. He was posted to Andaman and Nicobar Islands on deputation without any deputation allowance. During the period of his deputation from 1972 to 1979, he developed some illness which could not be diagnosed properly and he continued to suffer in one form or the other till his retirement. On his return from Andaman and Nicobar Islands, he was posted at Delhi in 1977. He remained on medical leave during 1979-80. While working in the office of the Superintending Engineer, PWD, he had an attack of neurosis during which time he remained mentally disturbed and was not in a position to perform his duty. The applicant has stated that he had intimated about this through a messenger to his department but the respondents have stated in their counter-affidavit that no such intimation was received by them. He has averred that he did not have the proper strength to ^{of an} know the whereabouts himself. He regained his consciousness and strength to work independently without the assistance of others only during 1987. He reported for duty on 26.10.1987 at the office of Superintending Engineer, Delhi Administration. He was directed to report to the Director General of Works, CPWD on 4.2.1988. Accordingly, he reported for duty on 5.2.1988 there.

3. The applicant was asked on 7.1.1988 by the Superintending Engineer, CPWD to produce medical certificate for his absence from duty on medical grounds. The applicant has stated that he got the medical certificate from M.M. Government Hospital (Mukund Lal Municipal Government Hospital) which was being run by the District Hospital of the State Government of the U.P. The medical certificate had been counter-signed by the Senior Medical Officer.

4. The grievance of the applicant is that despite the above, the Director General of Works, CPWD treated the aforesaid period as on leave from 26.10.1987 to 2.2.1988. He also treated the period of his absence from 1.1.1983 to 25.10.1987 as dies non.

5. The applicant made a representation to the effect that the period of his absence from duty commencing from 2.1.1983 to 25.10.1987 be regularised by grant of leave to the extent of the nature admissible under the rules. He has stated that treating the said period as dies non has adversely affected his pensionary benefits/ retirement benefits. According to him, no show cause notice was issued before treating the said period as dies non.

6. The respondents have stated in their counter-affidavit that the applicant did not produce any medical

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certificate or fitness certificate in support of his contention that he was suffering from neurosis from 1.1.1983 to 25.10.1987. He could produce the certificate only on 3.2.1988. He never applied for leave or extension of leave upto 26.10.1987. The respondents have, however, not controverted the version of the applicant that no show cause notice was given to him before deciding to treat the period from 1.1.1983 to 25.10.1987 as dies non.

7. In our opinion, the action taken by the respondents was in total disregard of the principles of natural justice. It is a fact that the applicant had suffered from neurosis and he had been away from duty on health grounds. After he produced the medical certificate, the respondents allowed the applicant to continue in service and retained him till he attained the age of superannuation of 58 years. In all fairness, the respondents should have treated the period of absence from duty by granting him leave of any kind so that the applicant would not be deprived of the benefits of pension which would have been admissible to him had he not been away from duty on health grounds.

8. In Ramji Dass Vs. U.O.I, & Others, AIR 1986(2) CAT 455, the Chandigarh Bench of this Tribunal has observed that in the absence of a show cause notice to a Government servant to treat the period of absence on health grounds as dies non, the respondents cannot do so. The same view was taken by the

Madras Bench of this Tribunal in a batch of applications in S.N. Ramaswamy Vs. U.O.I., 1989(10) ATC 80.

In the light of the foregoing, we partly allow the application and set aside and quash the impugned order passed by the respondents treating the period of absence of the applicant from 1.1.1983 to 25.10.1987 as dies non. We direct that the said period shall be counted as qualifying service for the purpose of computing pension and other retirement benefits admissible to the applicant. The respondents shall do so and pass revised orders regarding his pension, ^{gratuity} and other retirement benefits and release the outstanding dues to him together with interest at the rate of 10% per annum from the date of his retirement to the date of payment. The applicant should also be given revised pensionary benefits. ^{on the said basis.} The respondents shall comply with the aforesaid directions as expeditiously as possible but preferably within a period of 3 months from the date of communication of this order.

There will be no order as to costs.

B.N. LHOONLALYAL
(B.N. LHOONLALYAL)
MEMBER (A)
17.07.1992

P.K. KARTHIKA
(P.K. KARTHIKA)
VICE-CHAIRMAN (J)
17.07.1992

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