

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/01041/2016

Wednesday, this the 24th day of March 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

P.Shaikoya,
Aged 50 years,
S/o.Muthukoya.P. (late),
Junior Engineer, LPWD Sub Division,
Beypore, Kozhikode.
Residing at Pathummathada House,
Amini Island – 683 552.

...Applicant

(By Advocates Mr.M.R.Hariraj)

v e r s u s

1. The Union of India
represented by the Secretary to Government of India,
Ministry of Urban Development, New Delhi – 110 001.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
3. The Secretary (Works),
Administration of U.T of Lakshadweep,
Kavaratti – 682 555.
4. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavaratti – 682 555.

5. The Executive Engineer,
Lakshadweep Public Works Department,
Willingdon Island, Kochi – 682 003.

...Respondents

(By Advocates Mr.Brijesh.A.S., ACGSC [R1] & Mr.S.Manu [R2-5])

This application having been heard on 16th March 2021, the Tribunal on 24th March 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant is a Junior Engineer in the Lakshadweep Public Works Department (LPWD). He is aggrieved by orders treating the period of his absence as 'dies non'. A copy of the order dated 06.02.2015 is produced as the impugned order at Annexure A-1 in which the competent authority has decided to regularize the period of absence from 17.10.2013 AN to 30.06.2014 AN as follows :

17.10.2013 AN	Relieved from duty.
From 18.10.2013 to 27.10.2013	Joining Time for 10 days under FR 5(4) of JT Rules 1979.
28.10.2013 FN to 30.06.2014 AN	246 days treated as dies-non under GOI Decision No.2 of Rule 25 of CCS Leave Rules 1972.
On 01.07.2014	Rejoined duty.

He is also aggrieved by Annexure A-2 dated 10.12.2015 which turns down his representation for reviewing the Annexure A-1 order.

2. The applicant was transferred to Minicoy from Amini by order produced at Annexure A-3 dated 10.09.2013. He immediately sent a representation dated 12.09.2013 against the transfer, which is produced at Annexure A-4. However, as per Annexure A-5 relieving order dated 08.10.2013, he was relieved of his duties on the afternoon of 17.10.2013 and was directed to report for duty before the Assistant Engineer, LPWD Sub Division, Minicoy. However, he did not do so and appears to have

taken no steps to apply for leave or otherwise. He submitted that he met the Superintending Engineer, LPWD as well as the Administrator, Lakshadweep in the intervening period and requested for cancellation of his transfer. He submits that these two officers promised to consider the request positively. However, no action was taken. He was finally directed by a fax message a copy of which is produced at Annexure A-7 from Executive Engineer, LPWD, Kochi dated 09.06.2014 to join immediately at Minicoy without fail. He gave another representation dated 12.06.2014 to the Executive Engineer, a copy of which is produced at Annexure A-8. He also gave a representation to the 2nd respondent, Administrator on 12.06.2014 along with medical certificate, a copy of which is produced at Annexure A-9. However, he submits that he also simultaneously took immediate steps to travel to Minicoy, though he was given professional opinion against such travel and fitness certificate was not issued. He had been submitting representations basically on the ground of his own illness due to cardiac issues as well as on the ground that there was no one to take care of his mother. He then travelled to Kochi in a bid to reach Minicoy. He then gave another representation dated 25.06.2014, a copy of which is produced at Annexure A-10.

3. The applicant then finally joined at Minicoy, with a fitness certificate from the Medical Officer, Minicoy vide the letter/ joining report – a copy of which is produced at Annexure A-11, along with medical fitness certificate issued by the Medical Officer, Government Hospital, Minicoy stating that he was fit to rejoin and resume his duties. However, he claims that after a

few months of service there, he was admitted in Government Hospital, Minicoy on 13.10.2014 and was referred to mainland for better medical help. While he was admitted in the hospital he has received a show cause notice as to why action under CCS (CCA) Rules should not be taken against him vide O.M dated 14.10.2014, a copy of which is produced at Annexure A-16. The said Notice states that the applicant after joining at Minicoy had applied for regularization of his absence with a leave application along with numerous medical certificates obtained from different medical authorities instead of forwarding/applying for leave with medical certificates to the authorities competent to grant leave. The applicant then replied to the said show cause notice stating that due to his health conditions, he could not join in time and that he thought that the leave application along with medical certificates can be submitted only after joining at Minicoy. However, the explanation given by him at Annexure A-17 was rejected and the leave period was treated as 'dies non' vide the impugned order at Annexure A-1.

4. The applicant then submitted another representation dated 27.03.2015, a copy of which is produced at Annexure A-18, giving an explanation for his absence and non application for leave in time on medical grounds. This was also rejected by the impugned Annexure A-2 order. He submits that there are many similar cases in which the period of absence is regularized by grant of earned leave. He points to the case of Shri.T.Shukoor who was transferred from Amini to Kavaratti on 13.05.2014 but joined only on 01.03.2015. This has been produced at Annexure A-19. Thus, he claims that he has been subjected to hostile discrimination as his

requests have not been considered and he finally had to join at Minicoy risking his life. His period of absence he claims was not willful and there are no findings to this effect. Hence, he submits that the impugned action of giving him 'dies non' is taken without any notice and has disabled him to project his case properly and effectively to show that the absence was not willful but due to pressing circumstances which were actually beyond his control. He submits that the impugned action is inconsistent with the principles of natural justice. He thus prays to quash Annexure A-1 and Annexure A-2 orders and to direct the respondents to regularize the period of absence from 18.10.2013 to 30.06.2014 as leave as requested for by his representation at Annexure A-12.

5. The respondents have contested the above application submitting that the applicant is not entitled to get any of the reliefs prayed for. They submit that leave is not a matter of right and the applicant while working at Amini was transferred to Minicoy as per Office Order dated 10.09.2013 and was also relieved from Amini as per relieving order dated 08.10.2013. However, he did not obey the transfer order and submitted a representation on 12.09.2013 citing personal difficulties and seeking cancellation of the transfer order. The competent authority did not consider the representation of the applicant as it was devoid of merit. Later, he met the Superintending Engineer and the Administrator for cancellation of the transfer order. Both the authorities directed him to join duty at Minicoy. Finally, a fax message was sent to him on 09.06.2014 directing to report at Minicoy immediately as civil works of Minicoy had been suffering due to a shortage of Junior

Engineers. Instead of complying with the orders of the superiors the applicant again submitted a representation. He had not applied for regular leave at that point of time. Since his action was against the Conduct Rules, the Executive Engineer did not consider the representation favourably. Thereafter he submitted another representation and joined Minicoy with a fitness certificate. After joining, he had submitted a representation dated 14.07.2014 along with leave applications seeking regularization of his period of absence. The Superintending Engineer then asked the applicant to show cause why the period of absence should not be treated as 'dies non'. The applicant then submitted a representation dated 27.11.2014 which was examined by the competent authority. By Annexure A-1 order the competent authority has ordered to allow the admissible joining time and to treat the rest of the period as 'dies non'. Against the Annexure A-1 order he submitted another representation (at Annexure A-18) dated 27.03.2015 where he admitted that he had not joined the transferred place immediately on relief from Amini. He waited because he thought that he will be given a sympathetic consideration and positive response and he claimed there were assurances of early action. However, the respondents submit that there was no assurance given to him that his transfer would be cancelled and failure to join the transferred place after availing the admissible joining time therefore amounts to misconduct and he has no effective explanation for that.

6. In the circumstances, the respondents submit that there are no grounds to assail Annexure A-1 and Annexure A-2 orders. The cases of other officials like Shri.A.Mohammed Sayeed Fazle, Junior Engineer

transferred to Amini who was relieved from LPWD Sub Division, Beypore, Kozhikode as per order dated 11.04.2014 only are not similar. It is submitted that due to administrative reasons, Shri.Fazle's service was required for some more time at Beypore and that was why the Department was compelled to retain him at Beypore till 11.04.2014. Similarly, in the case of Shri..T.Shukkoor, brought out by the applicant, the competent authority for transfer was the Services Department. Since the competent authority in both the cases are entirely different, it is not correct to compare the two cases. The respondents conclude by saying that the transfer is an incidence of service and nobody has any 'indefeasible' right to be posted at a particular place till he pleases. The applicant had disobeyed the order of transfer without sufficient justification and there is nothing wrong in the action of the competent authority in deciding to treat the period of absence as 'dies non'. This decision of the competent authority is well supported by the Government of India decision No.2 under Rule 25 of the CCS (Leave) Rules, 1972.

7. The applicant has filed a rejoinder contending that while leave is not a matter of right, it does not mean that there exists an unbridled discretion in the authority concerned and that the law permits capricious and arbitrary exercise of power. The competent authority should have considered his request and intimated the rejection to him as a legal duty. The refusal to consider amounts to abdication of power and arbitrariness. According to the applicant, the Administrator and the Superintending Engineer whom he had met had assured him that the request for cancellation of transfer would be

considered and had never directed him to join duty. It was only because of their assurance the applicant was waiting without joining. It is not correct to state that any direction was given to the applicant by the Administrator or the Superintending Engineer to join duty before the fax message produced at Annexure A-7 was issued. When the Annexure A-7 was issued he immediately took steps to join duty at Minicoy, despite adverse medical advice. He did not join earlier only in anticipation and hope that his representation would be considered positively. It was for the authority concerned to send proper notice to an employee immediately asking him to rejoin in case they wanted him to do so. However, they failed to do so, till Annexure A-7, which shows that they were considering grant of some relief to him. He admits that these assurances were made orally until the direction given at Annexure A-7 was received by him. He then immediately join Minicoy as directed.

8. The applicant also submits that many other Junior Engineers like him such as Shri.Mohammed Sayed Fazal, Shri.K.P.Yakathali and Shri.C.M.Ibrahim were also allowed to continue in their original post despite Annexure A-3 transfer order. He understand this only after an Right to Information Act application was made by his mother; that he alone was singled out for this adverse treatment. He has produced the relevant note sheets of the file (at Annexure A-20) obtained by him under the RTI Act. It appears from the recording in the said note sheets that there was an apparent decision to retain the applicant and others like K.P.Yakata Ali, Mohammed Sayed Fazal and C.M.Ibrahim till 31.03.2014. This decision apparently was

taken on 21.11.2013 after Annexure A-5, which was the relieving order in his case, was issued. However, it is seen that this decision was not communicated officially to him. Annexure A-1 also seems to clearly ignore this particular decision. Further, even on 30.04.2014 all the officials covered by Annexure A-3 were not immediately relieved. It was only when the Annexure A-7 fax was issued that he understood that the cancellation of his transfer was not being made. He also submits that the case of Shri.T.Shukkoor and his case should be considered on the same basis, as at the relevant time, both the posts of Secretary (Service) and Secretary (Works) were held by the same person. In any case he submits that different authorities should not take opposite views on the same facts and circumstances.

9. We have heard learned counsel for the applicant, Shri.M.R.Hariraj, represented by his junior and learned counsel for the respondents, Shri.S.Manu, represented by Shri.R.Sreeraj. From the facts and circumstances as given above, it appears that the applicant after getting relieved from LPWD, Amini on 17.10.2013 simply remained there at a stand still without taking any steps either to proceed on leave with approval or to join at Minicoy. He submitted a representation to the authorities requesting to retain him at Amini due to his personal medical issues as well as issues relating to his mother's health and his son's education. However, he claims that since there was no response to the above representation, he continued at Amini without either applying for leave or joining at the new post at Minicoy. One would presume that being a responsible Government servant,

he should normally have taken necessary steps to either apply for leave or join in the new post. He claims that he met the Administrator as well as Superintending Engineer, who verbally gave him assurances, but as is well accepted, without any clear written orders, it is not possible to arrive at a conclusion relating to what was said or directed to him by the authorities. There is some evidence that the authorities were considering keeping him at Amini till 31.03.2014 as evidenced by the notings in the file produced in the Annexure A-20 note sheet produced by him. However, whatever may be the thinking as given in the file, the final decision, as evidenced by Annexure A-1, was to treat the entire period after excluding joining time as 'dies non'.

10. Therefore, the only matter to be considered by this Tribunal is whether the final decision taken is reasonable and acceptable given the facts and circumstances of the case or whether it was arbitrary or malafide and against the principles of natural justice in his case. In this matter we clearly find that the respondents were well within their rights in treating the period as 'dies non'. No formal leave application or any sort of request seems to have been submitted by the applicant with regard to the treatment of the period after he was relieved. He just remained absent without any notice, as mentioned earlier, except for submitting his first representation, sent immediately after the transfer order praying for retention at Amini. Normally such behaviour is not acceptable from officials working in the Government and can even invite disciplinary action which was not done. However, the authorities could consider to treat him with a little more

sympathy perhaps due to ignorance on his part and also on the ground that it appears from the notes written by the Superintending Engineer, as brought out earlier, that a decision seems to have been taken to retain him at Amini till 31.03.2014.

11. We, therefore, are of the opinion that given the totality of the facts and circumstances, including the information produced by the applicant at Annexure A-20, the authorities may take a relook of the case and decide whether they would like to retain the period of 'dies non' in full as ordered as per Annexure A-1 or to curtail it to some extent. We hasten to add that this is only a suggestion and we agree that the applicant was duty bound to join at the transferred place once he was relieved. Thus we are not quashing the orders at Annexure A-1 and Annexure A-2. We only suggest that the respondents could have a relook at the entire matter. We are, however, not issuing any directions and they may take a decision untrammelled by our observations.

12. In the light of the above, the O.A is dismissed. No order as to costs.

(Dated this the 24th day of March 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.181/01041/2016

- 1. Annexure A-1** – A copy of the Order No.1/28/2014-CBI/225 dated 06.02.2015 issued by the 5th respondent.
- 2. Annexure A-2** – A copy of the Annexure A-2 O.M.No.1/28/2014-CBI/1704 dated 10.12.2015 issued by the 5th respondent.
- 3. Annexure A-3** – A copy of the Order No.2/1/2006/CI/2574 dated 10.09.2013.
- 4. Annexure A-4** – A copy of the representation against the transfer on 12.09.2013.
- 5. Annexure A-5** – A copy of the Relieving Order No.2/7/97-C2-Vol.II dated 08.10.013.
- 6. Annexure A-6** – A copy of the O.M.No.PF11/2011/AE(SDK)/187 dated 11.04.2014.
- 7. Annexure A-7** – A copy of the Order No.1/3/2014-CBI dated 09.06.2014.
- 8. Annexure A-8** – A copy of the representation dated 12.06.2014 to the Executive Engineer.
- 9. Annexure A-9** – A copy of the representation dated 12.06.2014 to the 2nd respondent along with medical certificate.
- 10. Annexure A-10** – A copy of the representation dated 25.06.2014.
- 11. Annexure A-11** – A copy of the representation dated 01.07.2014 along with the medical certificate.
- 12. Annexure A-12** – A copy of the representation dated 14.07.2014 along with enclosures thereof.
- 13. Annexure A-13** – A copy of the discharge slip issued by the Government Hospital, Minicoy.
- 14. Annexure A-14** – A copy of the reference dated 24.10.2014.
- 15. Annexure A-15** – A copy of the discharge summary issued by the Medical Trust Hospital, Ernakulam along with enclosures.
- 16. Annexure A-16** – A copy of the O.M.No.1/28/2014-CBI/1121 dated 14.10.2014 issued by the Executive Engineer.
- 17. Annexure A-17** – A copy of the representation dated 27.11.2014.

- 18. Annexure A-18** – A copy of the representation dated 27.03.2015.
 - 19. Annexure A-19** – A copy of the O.M.No.12/45/2013-Services (Part)/2894 dated 29.07.2016.
 - 20. Annexure A-20** – A copy of the letter F.No.101/02/2018-S2/1398 dated 16.07.2018 and the relevant note sheets.
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