

Notice of leave

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No./393/89
T.A. No.

DATE OF DECISION 26th June, 1992

Shri D. P. Shukla Petitioner

Mr. A. M. Vaishnav Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent
Deputy Director (S & R) and

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✕
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✕
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✕

5

D.P.Shukla,
Projector Operator Cum Driver,
Save Grain Campaign Office,
O/o. The Dy. Director (S&R),
Govt. of India,
Ministry of Food & Civil Supplies,
Department of Food,
15, Bank of Baroda Staff Society,
Near P.T.College Road,
P.O.Paldi,Ahmedabad - 380 008.

...Applicant.

(Advocate : Mr.A.M.Vaishnav)

Versus

1. Deputy Director (S & R),
Govt. of India,
Ministry of Food & Civil Supplies,
15, Bank of Baroda Staff Society,
Near P.T. College Raod,
P.O.Paldi, Ahmedabad - 7.
2. Commissioner (S&R),
Ministry of Food & Civil Supplies,
Krishi Bhuvan,
New Delhi.
3. Secretary,
Ministry of Food & Civil, Supplies,
Krishi Bhuvan,
New Delhi.

...Respondents.

(Advocate : Mr.Akil Kureshi)

O R A L J U D G M E N T

O.A. NO. 393 OF 1989.

Date:26.06.1992.

Per : Hon'ble Mr.R.C.Bhatt : Judicial Member.

1. This application is filed by the applicant Project Operator cum Driver, with the respondents under Section-19 of the Administrative Tribunals Act, 1985, praying that the period of presence in the office from 11th October, 1988, to 26th October, 1988, be treated as duty and the impugned order Annexure-A/1, dated 14th March, 1989, passed by the respondent no.1, on 14th March, 1989, granting the same as Earned Leave being illegal be quashed and set aside. The applicant has not pressed

6

prayer - 11 (III), of O.A.

2. The case of the applicant is that he had high fall and was hurt while on duty at the headquarters during first week of ¹⁹⁸⁸ that he therefore, visited Vadilal Sarabhai Hospital, for his treatment which is a recognised hospital - for purposes of Medical treatment for the Central Govt. employees in Ahmedabad, that the said hospital gave him the certificate - Annexure A/2, on 11th October, 1988, that the applicant was not advised to drive the car for the period from 11th October, 1988 to 26th October, 1988. Annexure-A/4, is the copy of the Medical certificate dated 27th October, 1988, given by Vadilal Sarabhai Hospital, permitting the applicant to drive the car. It shows that the applicant was suffering from high fall from 11th October, 1988 to 26th October, 1988. He submitted this certificate before the authority concerned. The respondent no.2, ^{an} passed an order dated 12th October, 1988, vide Annexure-A/3, considering the certificate of Vadilal Sarabhai Hospital, as under :

"His application considered sympathetically and advised to take complete rest at his residence to avoid further complications of his health and he will be treated on E.L. on dated 10.10.1988, and on Medical Leave w.e.f. 11.10.1988, to 26.10.1988. After full recoveries he is instructed to bring medical fitness certificate to join his duties."

2

3. Learned advocate for the applicant submitted that inspite of the fact that the respondent No.1, advised the applicant to take complete rest at his residence, during this period, the said period is treated as on E.L., and ultimately the impugned order Annexure-A/1, dated 14th March, 1988, is passed by the respondent No.1, that the applicant has been granted 17 days E.L. i.e., w.e.f. 10th October, 1988, to 26th October, 1988. Learned advocate for the applicant submitted that inspite of the medical certificate, the respondents without taking into consideration the high fall to the applicant and without considering the fact that the Medical authority advised the applicant not to drive car during that period, the respondents did not accept it and considered that period as E.L. which is not legal.

4. The contention of the respondents found in the reply is that, the applicant has not exhausted other remedies and the application is premature. It is not pointed out whether there is any provision against or rule for appeal to the higher authority decision of respondent no.1, and hence it could not be said that this application is premature. It is contended that leave is not a matter of right and the Hon'ble Tribunal should not interfere in such order of the competent authority. It appears that there is some misapprehension of law in the mind of respondents because if the


per

respondents considered a particular period as ~~E.L.~~ E.L. disregarding the medical certificate, the Tribunal, can probe into it to know as to how this authority treated the said period as E.L. The respondents have also contended that the Medical authority did not advise the applicant to take rest. It is contended that the controlling officer without rejecting the certificate issued by the Vadilal Sarabhai Hospital, took lenient view. No reason is assigned by respondent No.1, in the impugned order as to why the medical certificate given by the Vadilal Sarabhai Hospital could not be accepted in toto. The applicant had high fall and he was not advised to drive a car for the period mentioned in the certificate. Therefore, at the most it can be considered as the medical leave but not an E.L. Learned advocate for the applicant submitted that the applicant was attending the office during this period but, he was not allowed to sign the muster roll and this period should be considered as a period of presence. I cannot accept this submission also because when the applicant had a medical certificate when he was not advised to drive car, the respondents would not take any chance to take any work from him. Considering all the aspects, I hold that the period from 11th October, 1988 to 26th October, 1988, should be

treated as medical leave and not as E.L. Hence the following order.

ORDER.

"The application is partly allowed. The impugned order Annexure-A/1, passed by respondent no.1, is quashed. The respondent no.1, is directed to treat the applicant's leave from 10th October, 1988, to 26th October, 1988, not as E.L., but as Medical Leave. The application is disposed of. No order as to costs.


(R.C.Bhatt)
Member(J)

AIT