

5

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.134 OF 1998  
Cuttack this the 3rd day of August, 1999

(PRONOUNCED IN THE OPEN COURT)

Anil Kumar Das Mohapatra

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes* ;
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No* .

\_\_\_\_\_  
(G.NARASIMHAM)  
MEBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*3.8.9*

V  
CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 134 OF 1998  
Cuttack this the 3rd day of August, 1999

**CORAM:**

**THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

...

**Anil Kumar Das Mohapatra,**  
aged about 54 years,  
at present working as Sub-Postmaster,  
Srikanthapur Sub-Office,  
Balasore-756001

...

Applicant

By the Advocates : Mr.T.Rath

-Versus-

1. Union of India represented through  
Chief Post Master General,  
Orissa Circle, Bhubaneswar
2. Director, Postal Services,  
Office of the Chief Post Master General,  
Orissa Circle, Bhubaneswar
3. Superintendent of Post Offices,  
Balasore Division  
Balasore

...

Respondents

By the Advocates : Mr.B.K.Nayak,  
Addl.Standing Counsel  
(Central)

...

*S Som*

ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing order at Annexure-3 treating the period of unauthorised absence from duty by the applicant from 11.7.1996 to 21.7.1996 as dies non - without break in service as also order dated 15.4.1997 at Annexure-5 rejecting his appeal against order at Annexure-3. The second prayer is for a direction to respondents to treat the period from 11.7.1996 to 21.7.1996 ~~to 22.7.1996~~ as transit and from 21.7.1996 to 23.7.1996 as E.L. or anyother kind of leave. His third prayer is for a direction to respondents to treat the unavailed transit period as unavailed leave and to credit the same to the unavailed leave account of the applicant.

2. The facts of this case falling within a short compass can be briefly stated. The applicant was working as Sub-Post Master, Soro Sub-Post Office when he was transferred to Bhograi Sub-Office in order dated 27.5.1996 in the same capacity. He was relieved from the post of Sub Post Master, Soro on 7.6.1996. According to applicant, immediately thereafter he fell ill and asked for commuted leave for 30 days enclosing a medical certificate. According to him, he was suffering from chronic bronchitis and hypertension with effect from 7.6.1996. He was directed to appear before the C.D.M.O., Balasore for medical check on 20.6.1996, but the applicant did not appear before the C.D.M.O. on the ground, as he has stated, due to his illness. On 7.7.1996, he applied again seeking extension of leave upto 6.8.1996 and he was again directed to appear before

*S. Som.*

the C.D.M.O., Balasore on 10.7.1996. Accordingly the applicant did appear before the C.D.M.O., Balasore, who found him fit to join duty and certified accordingly. Applicant has stated that while returning home from the Office of C.D.M.O., Balasore, he met with scooter accident and while he was lying unconscious near Fakir Mohan College, he was taken to a private Hospital, ~~x8xx~~ and admitted as indoor patient on 10.7.1996. He remained in the hospital till 17.7.1996. The applicant has filed discharge certificate showing the date of his admission and discharge from the Siva Hospital. Applicant has further stated that due to stress and strain owing to accident, he became mentally and physically incapable and did not apply for leave covering this period. Ultimately the departmental authorities in their order dated 23.7.1996, changed applicant's transfer from Bhograi to Srikanthapur S.O. within Balasore Town and the very next date the applicant joined Srikanthapur S.O. on 24.7.1996. The applicant has stated that he was under the impression that as he had not availed any transit in order to join Srikanthapur, it was not necessary on his part to submit any leave application seeking leave. He was directed to submit leave application for the period from 11.7.1996 to 23.7.1996. Accordingly he applied for leave enclosing a copy of the discharge certificate which is at Annexure-1 from Siva Hospital, Balasore. But in order dated 1.10.1996 vide Annexure-3 period from 11.7.1996 to 23.7.1996 has been treated as dies non without break in service. The petitioner filed an appeal which is at Annexure-4 and this was rejected in order at Annexure-5. In the context of the above, the applicant

has approached the Tribunal with the prayers referred to above.

3. Respondents in their counter have stated that after his transfer from Soro to Bhograi, applicant got himself relieved from the post of Sub Post Master, Soro on 7.6.1996 after-noon. He should have thereafter joined at his new place of posting after availing 10 days transit but he reported sick and applied for 29 days commuted leave from 8.6.1996. Respondents have pointed out that the applicant was asked to appear before the C.D.M.O., Balasore which he did not. Ultimately, on his application for further leave, he was again directed to appear before the C.D.M.O., Balasore and he did appear on 10.7.1996 and was found fit to resume duty, but he did not join his duty at his new place of posting nor did he apply for any leave. In the meantime the order of transfer was modified and he was posted as Sub Post Master, Srikanthapur S.O. in Balasore Town, ~~in accordance~~ dated 23.7.1996, where he joined on 24.7.1996 ~~after~~ after production of medical fitness certificate. After joining the new post, the petitioner applied for leave from 11.7.1996 to 24.7.1996 vide his application dated 30.7.1996 along with medical certificate of unfitness and <sup>authorities</sup> fitness. The departmental have stated that the applicant did not apply for leave earlier and therefore, he was on unauthorised absence. The applicant has also not explained as to why he could not apply for leave after 11.7.1996 and even after his discharge from the Siva Hospital. Respondents have also stated that the applicant even if met with a scooter accident and sustained injury, the same was in no way impediment on his part to apply for

*S. Jam.*

leave and that no F.I.R. has been lodged by the applicant about this accident. In view of this the respondents have stated that even if the fact of scooter accident is taken to be true, it was incumbent on the part of the applicant to apply for leave for the period and as he has not applied for the same, order treating the period of unauthorised absence as dies non has been passed. On the above grounds the respondents have opposed the prayer of the applicant.

4. We have heard Shri T.Rath, learned counsel for the applicant and Shri B.K.Nayak, learned Addl. Standing Counsel appearing for the respondents and also perused the records.

5. From the pleadings of the parties it is clear that the applicant after being relieved went on leave by reporting sick in order to avoid his new place of posting, i.e., Bhograi. This is also borne out by the facts that even though the applicant was asked to appear before the C.D.M.O., Balasore and even though according to his own statement he was only suffering from Hypotension and Bronchitis, he could not appear before the C.D.M.O. and only when he was asked for second time to appear before the C.D.M.O., Balasore on his application for further extension of leave, he did appear before the C.D.M.O., Balasore and was found fit. Thereafter, the applicant, according to his own statement, met with a scooter accident and was hospitalised from 10.7.1996 to 17.7.1996. Even during this period, immediately before his discharge or after discharge from the hospital he could have applied for leave. But he did not do so and remained on unauthorised absence till the transfer order

*S. Jam.*

was modified by the departmental authorities, apparently to his advantage, where he joined immediately. Even though the applicant did act in an indisciplined fashion, but in consideration of submissions made by the learned counsel for both sides and in view of the fact that from the pleadings of the parties, it does appear that the applicant suffered a scooter accident, we think this Original Application can be disposed of by issuing a direction to the departmental authorities to treat the period from 11.7.1996 to 23.7.1996 as leave due to the applicant. Orders at Annexurex-3 and 5 are modified accordingly. The applicant is directed to apply for leave for this period within a period of seven days from today and the respondents are directed to sanction the leave within a period of 45 (fortyfive) days thereafter. This prayer of the applicant is disposed of accordingly.

6. The applicant has further stated that the period of unavailed transit should be added to his leave account. We find in his representation to the departmental authorities, he has not made any such prayer and it is for the first time he has come up in this petition with this prayer. In view of this and in view of <sup>been</sup> the lapses of the applicant, which have been noted above, we are not inclined to consider this prayer of the applicant which is accordingly rejected.

7. In the result the Original Application, in terms of observation and direction as above is disposed of, but without any order as to costs.

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

B.K.SAHOO

S. 3.8.1996  
SOMNATH SOMY  
VICE-CHAIRMAN