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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

ORIGINAL APPLICATION NO. 363 OF 1998
Cuttack, this the 11th day of December, 2002

Shri Ajit Kumar Mitra

Applicant

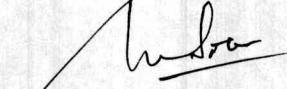
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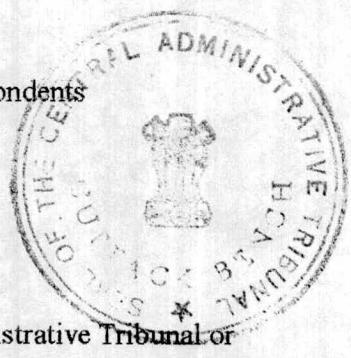
Union of India and another

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(B.N.SOM)
VICE-CHAIRMAN



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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH,
CUTTACK.

ORIGINAL APPLICATION NO. 363 OF 1998

Cuttack, this the 11th day of December, 2002

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Shri Ajit Kumar Mitra, aged about 50 years, son of Jagannath Mitra, At Budheswari Colony, Post Bhubaneswar, At present working as Sr. Accountant, Office of the A.G., Orissa, Bhubaneswar

..... Applicant

Advocates for the applicant - M/s Jaydeep Pal, A.Pal, S.K.Das, Md.G.Madani & S.K.Nayak.

Vrs.

1. Union of India, represented through its Accountant General, Orissa, Bhubaneswar.
2. Deputy Accountant General (Adm.), Office of the A.G.(A&E),Orissa, Bhubaneswar,
Dist.Khurda. Respondents

Advocate for the respondents - Shri B.Dash, ACGSC

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN



This Original Application, under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Ajit Kumar Mitra, assailing the refusal on the part of the Respondent No.2 to accept his joining report on 20.3.1998 on expiry of his leave.

2. The fact of the matter is that the applicant had proceeded on leave from 6.8.1997 to 19.3.1998. Undisputedly, he did not apply for leave in the prescribed form. He took leave during this period in five spells, and he got

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treatment for his ailment from a Registered Medical Practitioner (R.M.P.) and not from Central Government Health Scheme (CGHS) Dispensary, although he was living in Staff Quarters, New A.G. Colony, Bhubaneswar, and was a CGHS cardholder. The applicant had reported for duty on 20.3.1998 with fitness certificate issued by the R.M.P. who treated him during the period of his illness, i.e., from 6.8.1997 to 19.3.1998. It is alleged that he was not allowed to join duty by the Assistant Accounts Officer, to whom he reported for duty, on the plea that the medical certificate of fitness had not been issued by the CGHS Dispensary. The applicant also stated in his Application that along with the joining report, he had submitted a notice of three months for taking voluntary retirement from service. While the said Assistant Accounts Officer retained his notice for voluntary retirement, his medical fitness certificate was not accepted and he was advised that the same might be got countersigned by the CGHS authorities. The applicant, therefore, sent his joining report by Registered Post. Finally, he was allowed to join on 30.4.1998 by his controlling officer. The applicant has disputed the plea of Respondent no.2 that he being a CGHS beneficiary, he could not have undergone medical treatment under any R.M.P. and for grant of leave on medical grounds, he should have produced necessary certificate of illness and also the fitness certificate from the CGHS Dispensary. The applicant

has stated that merely by paying subscription, he did not become beneficiary of the Scheme, it was not a compulsory deduction from the salary of the Central Government servant, and the controlling authority wanted to harass him by putting these conditions both for granting leave, as well as for allowing him to join his duties.

3. Respondents, in their counter, have stoutly refuted the allegations made by the applicant. They have submitted that the applicant never submitted his leave application in the prescribed proforma. He was a CGHS beneficiary, but he did not obtain any medical certificate either for his treatment, or regarding his fitness to join duty, from the said authority, and that his plea that he was not a CGHS beneficiary was wrong as under CGHS, paragraph 12, the Scheme was applicable to all Government servants compulsorily and by virtue of that, the applicant was issued with CGHS Card and it is the applicant himself, who had submitted an application for issue of the said Card.

4. I have heard Shri J.Pal, the learned counsel for the applicant, and Shri B.Dash, the learned Additional Standing Counsel, appearing for the respondents, and have perused the records.

5. The whole matter revolves round two issues: (i) How the period of absence from 20.3.1998 to 30.4.1998 could be regulated; and (ii) Whether

medical treatment received by the applicant from R.M.P. could be accepted for grant of leave on medical ground and if the fitness certificate issued by the said R.M.P. could be accepted by the concerned authority to allow the applicant to join his duty.

6. As regards the first point, it is not disputed that the applicant had reported physically on 20.3.1998 to join his duty. The Respondents, in their counter, as well as in the Reply to the Rejoinder, have admitted that the applicant submitted his joining report, along with the medical fitness certificate issued by one R.M.P. Their plea is that as the applicant comes under the purview of the CGHS, he was advised to produce the medical certificate from CGHS doctor, in pursuance of their Office Order No.A.9421, dated 10.10.1988, read with Government of India's O.M., dated 7.10.1997.

While it cannot be disputed that under the Rules, the applicant should have obtained medical treatment under the CGHS, to which he is subscribing every month, and therefore, should have obtained the fitness certificate from the authority under that Scheme, the point to answer is, whether the concerned authority in Respondent no.2's office, i.e., Assistant Accounts Officer (I) was correct in disallowing the applicant to join his duty on the plea that the fitness certificate had not been issued by a CGHS doctor. The answer to this question will be available from the circumstances of the case.

From the facts of this case, it appears that the applicant was going through an extraordinary mental and physical condition during the period. In his Application, he has stated that he was going through some psychological problem because of which he lost mental balance. The medical certificate produced by the applicant reveals that he was suffering from various types of ailments, including nervous debility. The applicant in his letter (Annexure 2) had apprised the Respondents that he had met Joint Director, CGHS, for getting the medical certificate of fitness countersigned by that authority who did not oblige. In the said letter, he had also stated that since he was staying 4 KMs away from the CGHS Dispensary, he did not avail of CGHS facility, although he was monthly contributing subscription to the Scheme. While Respondent no.2 was within his right not to grant leave, because the leave was not applied following the prescribed procedure, the action on the part of the controlling officer of the applicant in preventing him from joining duty was not in order. What the authority should have done was to refer the applicant to the CGHS authorities for medical check up to know whether the applicant was physically fit to be on duty. By not allowing the applicant to join his duties, a peculiar situation was allowed to develop, as a result of which, the applicant was kept in a limbo from 20.3.1998 to 30.4.1998. It is interesting to note that when the applicant was allowed to join on 1.5.1998,

as it reveals from the counter of the Respondents, on that day also he had no fitness certificate from the CGHS authority. The Respondents have averred that he was allowed to join and was advised to submit leave application in the prescribed form covering the period of absence up to 30.4.1998. The applicant has felt aggrieved by this advice and has approached this Tribunal. From the facts of the case, as stated above, I fully appreciate the grievance of the applicant and it is not understood why the action that the Respondents took on 1.5.1998 was not taken on 20.3.1998, because the only rational action possible in the circumstances was to allow him to join and refer him to the C.G.H.S. authorities for ratification of his physical fitness condition. By not doing that, the applicant was kept on waiting from 20.3.1998 to 30.4.1998 by the Respondent No.2 for joining his duty after he recovered from his illness. That was an act of indecision on the part of the Respondent No.2 for which the applicant should not suffer. I, therefore, hold that this period from 20.3.1998 to 30.4.1998 should be treated as compulsory waiting for the applicant and he should be given the benefit of service accordingly for this period.

7. From the averments made by both parties, as also the oral submissions made by the learned counsels for both sides, I find that the applicant has now submitted leave application for the period of his absence from 6.8.1997

to 19.3.1998 in the prescribed form. He has applied for leave on medical grounds. My attention has been drawn to Office Memorandums issued by the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, on 24.8.2000 and the one on 15.6.2001 in partial modification of the provisions of Rule 19 of the Central Civil Service (Leave) Rules, 1972 and that of Department's O.M., dated 7.10.1997, allowing production of medical/fitness certificate from R.M.P. in certain peculiar circumstances. Although the present case of the applicant is not fully covered by this relaxation, there is no doubt that the leave rules are amenable to relaxation in certain overriding and peculiar circumstances to remove difficulties of the Government servants. The Central Government issued orders, in pursuance of the recommendation of the Fifth Central Pay Commission, not to allow acceptance of certificate issued by an R.M.P. in respect of a CGHS beneficiary to check absentism and indiscipline in Government offices. But, in this case, it is found that the applicant did not proceed on leave with any ill motive, nor did he derive any gain by subscribing to the CGHS and in not receiving the benefit of the Scheme. From his averments, as well as from his communications sent to the Respondents, it is apparent that there was a big vacuum in his mind during the period under consideration, which led to behavioral aberrations, negative

thinking and so on. Having regard to the aforesaid mental state of the applicant and the fact that he felt so desolate with life as to have decided to seek voluntary retirement immediately after coming back from leave, I am of the view that his absence from 6.8.1997 to 19.3.1998 deserves to be considered in this backdrop and the Respondents, I hope, would take all these facts and circumstances of the matter into consideration in deciding his leave application for the period in question.

8. In the result, the Original Application is allowed. The Respondents are directed to treat the aforesaid period from 20.3.1998 to 30.4.1998 as compulsory waiting for the applicant and grant him the benefit of service for this period. They are also directed to consider the question of granting leave to the petitioner from 6.8.1997 to 19.3.1998 on the strength of medical certificates obtained from an R.M.P., keeping in mind the observations made by this Tribunal in the preceding paragraphs. These directions be complied with within a period of 90 (ninety) days from the date of receipt of copy of this order. No costs.


(B.N. SOM)
VICE-CHAIRMAN


CAT/CTC 11th Dec. 2002
AN/PS