

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application No. 172/2005
&
Misc. Application No. 79/2005**

Date of decision: 08.09.2006

Hon'ble Mr. Kuldip Singh, Vice Chairman

Hon'ble Mr. J P Shukla, Administrative Member.

Nirmal Kumar Singh Kheechi, s/o Shri Ladhu Singh Kheechi, r/o 54 Polo First Paota Jodhpur, Official Address Postal Assistant, Jodhpur, Head Office Jodhpur.
: Applicant.

Rep. By Mr. Kamal Dave: Counsel for the applicant.

VERSUS



1. Union of India through the Secretary, Ministry of Post and telegraph, Department of Post, Sanchar Bhawan, New Delhi.
2. Principal Chief Post Master General, Rajasthan Circle No. 1, Jaipur. (Rajasthan)
3. Post Master General, Rajasthan western Region, Jodhpur (Rajasthan)
4. Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur (Rajasthan).
5. Senior Post Master, Head Post Office, Jodhpur (Rajasthan)

: Respondents.

Rep. By Mr. Mahendra Godhra proxy
the

Counsel for Mr. Vinit Mathur

: Counsel for

respondents.

ORDER

Mr. Kuldip Singh, Vice Chairman.

This is an application filed under Sec 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 05.03.2002 and also another order dated 26.02.2004, whereby the respondents have treated the

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period from 05.12.2000 to 18.12.2000 as 'dies-non' and respect of the applicant on the principle of 'no work no pay'. The applicant has also prayed that both the orders be declared as illegal in respect of the applicant and the said period be directed as leave on medical grounds as allowed for the remaining period.

2. This application was filed on 09.05.2005. The orders under challenge are dated 05.03.2002 and 26.02.2004. Thus there is a delay of less than three months in filing the present application. The applicant has also sent a notice for demand of justice on 06.09.2004, which remains unanswered by the respondents till date. However, by way of abundant caution the applicant has filed M.A No. 79/2005 for condoning the delay, if any, in preferring this O.A. Notice was issued to the respondents but till date no reply has been filed in M.A. No.79/2005. As the respondents have not opposed the delay we prefer to condone the delay in filing the O.A. M.A. No. 79/2005 is hereby allowed.



3. The facts as alleged by the applicant in brief are that the applicant was working as Postal Assistant in the Head Post Office, Jodhpur and he is still continuing in the same post office. At the relevant time, it appears that

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certain trade unions have given a call for strike in the Postal Department. In order to prevent the strike, the authorities have issued instructions as per Annex. R/1 to all the officials that no work nay pay clause would be imposed on the striking employees; that no leave would be sanctioned for the strike period except those who are indoor patients or have been granted sick certificate by the Medical Officer in-charge of P & T dispensary wherever it exists; that in respect of employees who got the leave already sanctioned that was also cancelled. The applicant stated to have submitted applications for leave on medical grounds firstly for six days from 04.12.2000 to 09.12.2000, secondly for 10 days from 10.12.2000 to 19.12.2000 and thirdly for four days from 20.12.2000 to 23.12.2000. It is stated that since the applicant is diabetic patient and he was allergy against certain allopathic medicines since 1970 he preferred to go to Ayurvedic treatment instead of allopathic treatment. He then contended that while joining duty he produced the fitness certificate issued by concerned doctor. He further submitted that the respondents in view of the strike period have not sanctioned medical leave from 05.12.2000 to 18.12.2000 and treated the said period as 'dies non' and the said period will neither be counted as service nor will be construed as break in service. But for the remaining period i.e. 04.12.2000 and



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from 19.12.2000 to 23.12.2000, though the medical certificates were continuous one from 04.12.2000 to 23.12.2000 (in three spells) the respondents have sanctioned the leave and his medical claim was also reimbursed. The applicant is challenging these orders. He is taken various grounds. He submits that the medical certificate presented by him were found to be genuine, otherwise the respondents would not have sanctioned leave on medical grounds for the period 04.12.2000 and from 19.12.2000 to 23.12.2000 in respect of the applicant. It is also submitted that the action of the respondents is violative of Art. 14 and 16 of the Constitution of India. The respondents cannot treat a portion of leave mentioned in the medical certificate as leave on medical grounds and the remaining portion as 'dies non'. It is further submitted that the respondents are misusing the official position and hence the orders be set aside as contrary to the rules.



4. The respondents have stated that the prior to the commencement of the strike, departmental instructions were issued vide Annex. R/I mentioning clearly that no medical leave would be sanctioned unless the certificate is issued by the P & T dispensary or has been obtained after having taken the indoor treatment. It is further stated that the applicant has remained an outdoor

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patient in Ayurvedic Hospital and as the P & T department does not recognize the said hospital, the leave prayed for was not granted. As the competent authority issued no leave orders, the period from 05.12.2000 to 18.12.2000 has been treated, as 'dies non' on the principle of no work no pay. The respondents have prayed for the dismissal of the O.A.

5. We have heard the elaborate arguments advanced by the learned counsel for the parties and carefully perused the records. The learned counsel for the applicant has submitted that the respondents cannot deny the leave on medical grounds in respect of the applicant when medical certificates support the same. The learned counsel for the respondents, relying on Annex. R.1 dated 30.11.2000, in support of the contention that no leave would be sanctioned during the strike period, except under certificate issued by the P & T Dispensary wherever it exists and to those who took treatment as indoor patient, contended that no interference is called for from this Tribunal. The leave clause of Annex. R.1 are being translated from Hindi to English which reads as under:



3. "All departmental employees are informed that 'no work no pay' rule would be imposed on the striking the employees.
4. xxx xxx xxx
5. (i) Under no circumstances any kind of leave will be granted, provided if any employee is undergoing indoor treatment from 05.12.2000 and wherever it is possible medical

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certificates issued by the authorized medical officer and in respect of those employees who have been already sanctioned leave during the strike period their leave is also hereby cancelled. Further wherever the P & T Dispensary is available, the employees should produce only the medical certificate issued by the P & T Dispensary and medical certificates issued by other hospitals will never be recognized."

A bare reading of Clause 3 above would go to show that the employees who are on strike would be treated under the rule of 'No work No pay'.

6. We may mention here that there is a vast difference between 'no work no pay' rule and the said period being treated as 'dies non'. The concept of 'dies non' is such a concept which takes away many civil rights of an employee with far reaching consequences and before imposing 'dies non' one should be put on notice and after affording opportunity of hearing, the competent authority can declare and impose the 'dies non' in accordance with law.

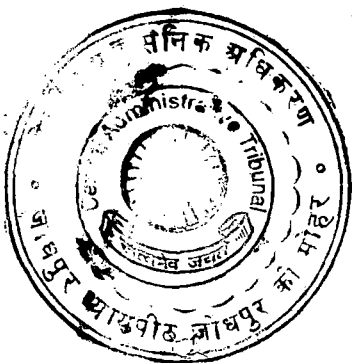
7. In this case, first of all the department had specifically stated that the striking employees will be dealt with under the rule of 'no work no pay' and it is nowhere mentioned that strike would be treated as 'dies non'. Admittedly, the applicant was never put on notice before imposing the dies non. Hence we are of the view that the principles of natural justice have been violated. Accordingly, we hereby quash the order treating the period of absence from 05.12.2000 to 18.12.2000 as




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'dies non' in respect of the applicant. However, the department within their right to cancel even the sanctioned leaves as per emergency measure. For this also they have given a reasonable exception to indoor patients.

8. But from a reading of R.1 it is clear that nowhere it was declared that the period of absence would be treated, as 'dies non' because for that a different procedure as prescribed in FR & SR has to be followed. In this case no such procedure has been followed. More over vide R.1 the only penalty prescribed was that of 'No work No pay'. There was no indication of treating the period as 'dies non'. So it could not treat the period as such. Normally we would not have interfered with the punishment order and should have remitted back the case for passing fresh orders. But in this case, since the other penalty of 'dies non' has been imposed on the applicant, by applying the rule 'No work No pay' is the maximum punishment as per R.1. Therefore we quash the part I of penalty of 'dies non'. OA is allowed to the extent indicated above. No costs.




(J P Shkula)
Administrative Member


(Kuldip Singh)
Vice chairman

Jsv.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I-15

ORDER SHEET

Misc APPLICATION NO 29 OF 2005 in O.A. 172/2

Applicant (s) Nirao/Kumar Singh Khelki

Respondent (s)

Advocate for
Applicant (s) Komal Dave

Advocate for
Respondents (s)

Notes Of the Registry

Orders Of The Tribunal

10/5/05

This is a misc application filed
by the petitioner U/s 21 of the
AT Act 1985, for condonation
of delay in the filing the
OA — /2005

It is a JB case & pertains to
the Jurisdiction of Jodhpur Bench
On scrutiny it has following
defect.

✓ (1) Date not mentioned & not
identified after verification.

Sd/- [Signature] he
10/5/05
Noted on 26/5/05
[Signature]

Defect
Discovered
on 12/5/05
he

22/6/05

Mr Komal Dave, Counsel for applicant

Register put up in Court for
admission on 28/6/05 along with OA.

[Signature]
REGISTRAR
C.A.T. JODHPUR

20-6-05

3-16

Mr. Kamal Dave, Counsel for applicant
D.B. not formed.

Put up for admission on 20-7-05

BY ORDER
COURT OFFICER
CAVE JODHPUR

20-7-05

Mr. Kamal Dave, Counsel for applicant
Heard.

Issue notice to the respondents regarding admission of this case returnable on 23-8-05. Notices to be sent by speed post / registered A.D. to the respondents who are residing out side Jodhpur. Local respondents be served notices by hand delivery by this bench of the Tribunal.

G. R. PATWARDHAN
Adm. Member

J. R. KAUSHIK
Judl. Member

23-08-05

Mr. K. Dave, Counsel for applicant.
Mr. V. Meher, Counsel for respondent.
Rt the case on 19.09.05 for admission along with 15.0.11

WARDHAN
Adm. Member

J. R. KAUSHIK
Judl. Member

Compliments
made in P.A.
8/7

Notice served
but
Reply not filed
15/7

Reply not filed
6/9

RECEIVED
JUN 20 1905

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL I-17
JODHPUR BENCH, JODHPUR

ORDER SHEET

APPLICATION NO. 78 OF 05

Applicant (s)

Respondent (s)

Advocate for
Applicant (s)

Advocate for
Respondents (s)

Notes Of the Registry

Orders Of The Tribunal

19-5-05

Mr. Kawal Dave, Counsel for applicant.
Mr. Vinit Mathur, Counsel for respondents.
D.B. not formed. Put
up for admission on 10-11-05.

By Order
[Signature]

COURT OFFICER

Reply not filed
[Signature]

18-11-05

Mr. Kawal Dave, Counsel for applicant.
Mr. Vinit Mathur, Counsel for respondents.
D.B. not formed. Put up
for admission on 24-01-06.

By Order
[Signature]
FOR COURT OFFICER

24/01/2006

None is present for the parties.

RECALL 14000

List the case on 17/02/2006

for admission along with its O.A.

[Signature]
J. K. KAUSHIK
Judl. Member

[Signature]
EV. K. MAJOTRA
Vice Chairman

Reply not filed
[Signature]

Part II and III destroyed
in my presence on 11/4/14
under the supervision of
section officer (I) as per
order dated 31/01/14

HONORARY CLERK

Section officer (Records)

✓ 17-2-06

I-18

Mr. Kamal Dave, Counsel for applicant
Mr. Vinit Mathur, Counsel for respondents
D.B. not formed. Put
up for admission on 18-4-06.

By Order
delit
COURT OFFICER

18-4-06

Mr. Kamal Dave, Counsel for applicant
Mr. Vinit Mathur, Counsel for respondents
D.B. not formed. Put
up for admission on 18-7-06.

By Order
delit
COURT OFFICER

18-7-06

Mr. Kamal Dave, Counsel for applicant
Mr. Vinit Mathur, Counsel for respondents
D.B. not formed. Put
up for admission on 8-9-06.

By Order
delit
COURT OFFICER

8/9/06

Mr. Kamal Dave, Counsel to
applicant
Mr. M. Sodere adv. brief holder to
Mr. Vinit Mathur to respondents.
Heard. MA has
been disposed of by a separate

Order

J. P. SHUKLA
Adm. Member

KULDIP SINGH
Vice Chairman

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