

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 419/2012

Friday, this the 6th day of July, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

Joseph Thomas, S/o late P.C.Thomas,
Staff No.829,
Sports Authority of India Basket Ball Coach,
SAI Training Centre, Aquatic Complex,
Thrissur. - Applicant

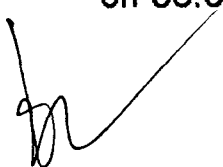
(By Advocate Mr Shafik M Abdulkhadir)

v.

1. Union of India represented by the
Director General, Sports Authority of India,
Jawaharlal Nehru Stadium Complex (East Gate),
Lodhi Road, New Delhi-110 003.
2. The Principal,
Lakshmi Bai National College of Physical Education,
Trivandrum.
3. The Assistant Director,
Sports Authority of India,
SAI Training Centre, Aquatic Complex,
Chembukkavu, Thrissur-680 020. - Respondents

(By Advocate Mr Govind K Bharathan)

This application having been finally heard on 28.06.2012, the Tribunal
on 06.07.2012 delivered the following:

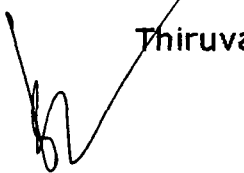


ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant, a basketball coach, has been functioning under the third Respondent at Thrissur since 2007 and for administrative control the applicant comes under the Sports Authority of India. On 4th April 2012, according to the applicant respondent No. 3 had intimated the applicant of one coaching camp at Thiruvananthapuram for which the applicant had agreed to go. However, on 07 - 04 - 2012, while playing basketball with veterans and the local boys, the applicant had a fall and got his back severely hurt and the doctor advised him for a rest for about two weeks. Despite his severe ailments, the applicants came to the centre and informed respondent No. 3 of his condition and submitted a leave application for 14 days w.e.f. 08 - 04 - 2012. Annexure A-3 refers. According to the applicant there was no inkling about the sanctioning or otherwise of the leave applied for and the applicant bona fide believed that his leave application stood sanctioned. However, The applicant had to come again on 10-04-2012 to meet respondent No. 3, in connection with two of his player/students. It was at that time that he was served with Annexure A-2 office order dated 04 - 04 - 2012 to report to the Deputy Director(Schemes and Coaching), SAI LNCPE, Thiruvananthapuram on the forenoon of 09-04-2012. On receipt of the same the applicant had moved Annexure A-4 representation wherein he had explained that the lady clerk in charge of the dispatch approached the applicant for delivery of this order 72/ 12 to which the applicant informed her that he was going on



medical leave and the matter was being known to the in charge and thus did not receive the said order. The applicant thereafter submitted another application for leave for a like period from 22-04-2012 to 05-05-2012 under a medical certificate from the District hospital, Trichur. Annexure A5 refers. Meanwhile the applicant received a communication from the respondents directing him to present himself before the outpatient clinic of the Department of Orthopaedics, Medical College, Thiruvananthapuram for a second medical opinion as his leave application from 08 - 04 - 2012 to 21 - 04 - 2012 was not sanctioned. It is the case of the applicant that he did present himself before the medical authorities on the scheduled date but there is no communication from the office of the respondents to the hospital in this regard. Hence, he himself had to go to LNCPE and take a copy of the letter and had to undergo a medical examination. He was told that the report of medical examination would be directly sent to the authorities concerned. As the applicant's leave was only upto 05-05-2012, he reported the office on 07 - 05 - 2012 and also signed the attendance register for that day. However, the next day when he went to the office he found his earlier initials appended on the previous day's scored of. He had however signed on that day also but took leave for the afternoon session on that day and full day leave for the next day. When he reported on 10 - 05 - 2012, against his name in the register and entry was made, "temporary duty to Thiruvananthapuram".



2. According to the applicant, in fact, the very camp for which the applicant was detailed to Thiruvananthapuram already came to an end as on 30 - 04 - 2012. Under such a circumstances, the applicant had submitted representation vide Annexure A-7 dated 10th May 2012. In response thereto, the authorities had issued the impugned Annexure A-1 order dated 15-05-2012 stating that the temporary duty of the applicant got extended vide Office Order No. 19 of 2012, dated 30-04-2012. The applicant was directed to report to Thiruvananthapuram failing which disciplinary action would be taken against him. Annexure A-1 order and Annexure A-2 relieving order, are under challenge on various grounds as contained in para 5 of the O.A.


3. The applicant has sought for the following reliefs:-

(i) To call for the records leading to the issue of Annexure A-1 to A-7 and to quash A-1 and A-2 to the extent it transfer and relieve the applicant to join at Trivandrum;

(ii) To declare that the extension of the temporary assignment of the applicant as per office order No.19/2012 dated 30.4.2012 even after the coaching camp is over is illegal, arbitrary and to quash the same;

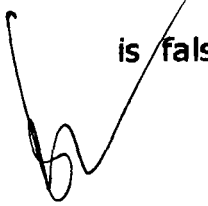
(iii) To declare that the applicant is entitled for retention at Trichur in the present posting and to direct the respondents to permit him to sign the attendance and conduct his training programme;

(iv) To pass such any other orders which this Hon'ble Court may deem fit and proper in the circumstances of the case.



4. Respondents have contested the O.A. According to them, Vide Annexure R2A, an order was passed whereby the applicant along with six other coaches from different Sports Authority of India Training Centres in Kerala were assigned temporary duty at Lakshmibai National College of Physical Education (LNCPE) for conducting Summer Coaching Camp under 'Come and Play' scheme from 09th April, 2012 to 30th April, 2012. Nearly 1100 students participated in the "Come and Play" Scheme, to receive free coaching facilities. The applicant is the lone Basket ball Coach at different STCs at Kerala. The applicant is in the habit of taking leave on medical grounds or otherwise, especially when he is assigned special duties. His frequent unscheduled leave earlier caused total inconvenience in training basket ballers at the STC Calicut. Annexure R-2B Memo was issued. Like wise, yet another Memo was issued on 31-12-2005 vide Annexure R-2C. Due to his unauthorized absence, he was sent another letter dated 16-10-2008 vide Annexure R-2D. Based on the same, he was issued with an yet another notice dated 26-02-2009, vide Annexure R2E. Whenever the applicant is posted out of Thrissur, he used to take medical leave.


5. As regards the merits of the matter, the respondents contend that he had refused to receive the relieving order as is evident from his own statement contained in his representation vide Annexure A-4. It has also been contended that the contention that the Hospital authorities had not been communicated about the medical examination is false, which is evident from Annexure R2F. In their reply and



additional reply, the respondents have stated that the very submission of the applicant that he had a severe hurt on 07-04-2012 is false, as the authorities who had conducted the medical check of the applicant did not reflect the same as their finding.


6. The applicant in his rejoinder, refuted all the contentions as contained in the reply and stuck to his gun that he never had been supplied with a copy of the relieving order, that he had been served the copy of the relieving order much late and that he had not been permitted to sign the attendance register. He has also contended that the training period cannot be extended beyond summer and no official communications have been issued for extending the duration of the camp.

7. In their additional reply, the respondents annexed a copy of the medical report, which according to them does not anywhere state that the applicant's ailment was aggravated due to the fall he has stated to have had on 07-04-2012. They had also stated that though the applicant claims that he had been attending the office religiously despite his ailment and that of others in the family) Annexure R-2-Q would reflect that students who were eager to attend the classes to learn the game were disappointed because of the continuous absence of the applicant. Annexure R-2-O is a letter from a parent reflecting the extent of properties Possessed by the applicant. It has also been stated that the applicant has been running a jewellery shop and the visiting card, carrying the officially allotted mobile number and his



name would vouch for the same. Above all, in so far as medical report is concerned, though initially as a narration, it was stated that the applicant had presented himself with low backache aggregated by activity and strains since 07-04-2012, the actual ailment was acute myalgia Syndrome induced by stress and strain from which the applicant was suffering from 07-04-2012. His is a case of Lumbago Phase and he is able to ambulate with mild discomfort to the lumbo sacral spine region. The ailment was attributable to spondylosis changes consistent with his age and activities. On review on 24-05-2012 he showed good recovery and not much discomfort is present as of then (24-05-2012).

8. Counsel for the applicant, vociferously argued that the matter is one of declaration that the applicant attended the office from 07-05-2012 but that he has not been permitted to sign the attendance register. Further, at no point of time was he served with the copy of the transfer order and further extension. The relieving order was also not served upon him in person but sent by post, which the applicant received much later than the alleged date of being relieved. All the actions are stage managed and it is only to prejudice the Tribunal that various alleged incidence of 2005 vintage have been brought in the pleadings. As regards the medical report, the counsel contended that it is a fact that the communication from the office never reached the hospital and it is the applicant who obtained the same and ensured that the same was available with the Hospital. Again, his discomfort can easily been associated with the fall he had and in fact the medical

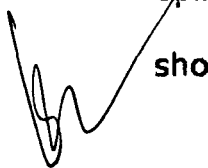


report refers to the wound caused due to fall. The counsel further argued that all the contentions about the absence/leave of the applicant on various days, other allegations about possession of properties have all been mentioned only to prejudice the Tribunal as these are totally irrelevant to the main matter of challenge to the transfer order. The counsel further submitted that if there be any truth in such allegations, remedy lies elsewhere and not before this Tribunal which is dealing with only the impugned order relating to temporary duty.

9. Senior Counsel for the respondents submitted that the following are the main issues and each such such issue could easily be met with with the available pleadings.

(a) As to his refusal to receive the transfer/relieving order. It is the very admission of the applicant in para 4 of the representation at Annexure A-4 dated 17-04-2012 that while coming out, the lady clerk, in-charge of the despatch of such letters approached the applicant for the delivery of the Office Order No. 72/12 to which the applicant had informed her that he was going on Medical leave and the matter being known to the in-charge, he did not receive the order.

(b) As to the alleged fall and its consequences: The medical opinion at Annexure R 2N(b) dated 24-05-2012 would go to show that the applicant presented before the board complaining

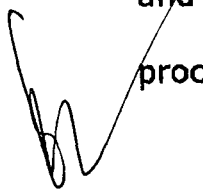


low backache aggravated by activity and strains since 07/4/12 following a sports practice event at Thrissur. The very complaint related only to pain due to strain and not exactly on account of any fall. In addition, the opinion goes to show that the applicant 'has partly recovered from the acute lumbago phase and he is able to ambulate with mild discomfort to the lumbosacral spine region. The medical term '*Lumbago* as per Webster's New World College Dictionary 2006 defines Lumbago and Lumbar as follows: -

Lumbago: Rheumatic pain in the lumber region; back ache, esp. in the lower part of the back.

Lumbar: Of or near the loins; specif. designating or of the vertebrae, nerves, arteries etc., in the part of the back just below thoracic region.'

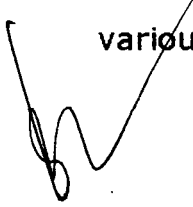
(c) As to the absence of request from the office at the Hospital and the efforts made by the applicant to secure the same: The hospital authorities in their medical opinion report had made a reference to the respondents' letter and also the letter of the Medical Superintendent of the Govt. Medical College Hospital. These would show that the letter of the respondents had already reached the medical authorities even as on 26-04-2012 which is the date when the medical authorities wrote to the respondents and there was no need for the applicant to run around to procure a copy of the said order for obtaining medical opinion.



(d) As to the devotion with which the applicant has been functioning. According to the senior counsel, the applicant has been a habitual absentee and details have all been given in the reply statement to the rejoinder. There have been complaints about his non presence in the Institute whereby the students could not get trained in Basket-ball. Again, the senior counsel referred to another letter from the parents of a student relating to possession of various costly movable/immovable properties and that the applicant is actually conducting business in Jewellery.

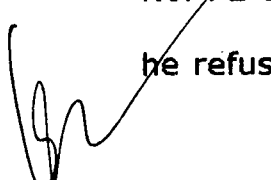
10. Arguments were heard and documents perused. At the very outset, it must be clarified that matters relating to the past conduct as contained in the reply and additional reply, or for that matter, the so called possession of wealth or the applicant being engaged in jewellery business are all beyond the scope of this O.A. All that is required to see is whether there has been any vested right of the applicant which has been hampered by the respondents in their action. Further, in so far as transfer order is concerned, whether the respondents have violated any statutory or other professed norms or whether there is any element of malafide.

11. These are analyzed in the succeeding paragraphs. Repetition of various contentions has become inevitable.



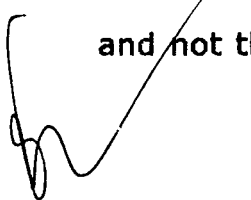
12. The main matter is that the applicant had been asked to attend the summer coaching camp under "Come & Play" from 09th April to 30th April at LNCPE, Thiruvananthapuram. According to the applicant, the main office order (Annexure R2A) was not received by him. Nor in fact was the relieving order before 10th April, 2012. The applicant went and signed the attendance register on 7th May, 2012 after availing of medical leave but the next day his initials were found struck off. Despite the same he signed for the second day and on the next day, he found the attendance register containing a line against his name for the rest of the month indicating temporary duty to Thiruvananthapuram. From that day, the applicant has been regularly attending the Institution but was not permitted to sign the attendance register. Absence of service of the transfer order and delayed service of relieving order, relief *in absentia*, etc., vitiate the very order of transfer. Again, the fact that the medical opinion reflects the ailments confirm the fact of the applicant's fall on 7th April, 2012. It is also the contention of the applicant that the respondents passed another order of extending the duration of summer camp at Thiruvananthapuram, though the summer camp is normally during the period of vacation.

13. According to the respondents, however, the applicant's contention as to the fall has not been proved for, the medical report contains the ailment, which is not out of any fall, nor was there any mention in the medical opinion about the fall. That the office order No. 72 of 12 dated 7th April, 2012 was served upon the applicant which he refused to receive the same and this has been well admitted by the



very applicant.

14. The move ordered by the respondents is one of temporary duty initially for a few weeks and then extended further and it did not involve any permanent shifting of the applicant. The applicant could have easily obtained the copy of the first order directing him to attend the summer camp from the authorities concerned. Again, if the applicant had met the authorities on 7th April, 2012, (which has been denied by the respondent concerned), nothing prevented the applicant from receiving the relieving order on 7th itself and he could have explained in writing the actual physical condition in response to the same. The medical opinion nowhere states that there was a fall. Complaint of low backache aggravated by activity and strains alone was made by the applicant before the medical authorities. The diagnosis also did not reflect any fall which had caused the lumbago phase. If the dictionary meaning of the term Lumbago is taken in to account, the same goes to show that it is due to some Rhumatic pain and not of a fall. Again, only age related ailments had been mentioned. True, the applicant had obtained a certificate from one Dr. Narayanankutty, Consultant, District Hospital Thrissur for 14 days w.e.f. 8th April. 2012. If an injury is so severe that it would have warranted four weeks' continuous bed rest, the same would have, according to any person of general intelligence, been evident when the medical board had conducted the medical examination. But the medical opinion is silent about this. It reflected certain other ailment and not the one which was highlighted by the applicant for his inability



to attend the summer coaching at Trivandrum. Thus, the very basic foundation of the applicant's absence is absent and the Tribunal is inclined to accept the views of the respondents in regard to the same when in their reply.

15. In view of the above, the applicant could not make out any case and as such, **the OA is dismissed**. However, in the interest of justice, his absence, it is suggested, be considered as leave so that there shall be no break in service. The applicant be permitted to join (if not already joined) the office of Respondent No. 3 and if there be any requirement of his move to Thiruvananthapuram, by way of continuation of the earlier programme of summer coaching camp, a fresh order be issued.

16. No costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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