

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No. 432 of 1997

Wednesday, this the 6th day of August, 1997

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. K. Balendran,  
Police Constable, B.No.176,  
Chetlat Police Station,  
Lakshadweep. .. Applicant

By Advocate Mr. Thampan Thomas

Versus

1. The Deputy Superintendent of Police,  
U.T. of Lakshadweep,  
Kavarathi.
2. The Superintendent of Police,  
U.T. of Lakshadweep,  
Kavarathi.
3. The Inspector General of Police,  
(Administration),  
U.T. of Lakshadweep, Kavarathi. .. Respondents

By Advocate Mr. PR Ramachandra Menon, ACGSC

The application having been heard on 6.8.97, the  
Tribunal on the same day delivered the following:

O R D E R

The applicant seeks to quash A-7 order converting  
the leave granted to him as loss of pay leave on personal  
affairs and to direct the respondents to grant leave to  
the applicant for 161 days as commuted leave on medical  
grounds.

2. The applicant is a Police Constable working under  
the respondents in Lakshadweep. He came to the mainland  
after taking 10 days casual leave from 11-9-1995.

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On expiry of the casual leave he could not join duty as he fell sick. He applied for medical leave with medical certificate issued by the Civil Surgeon of Kerala Government Hospital, Calicut. He was under treatment upto 15.2.1996. On recovery of his illness he obtained a fitness certificate and reported for duty. The leave of the applicant was regularised as loss of pay leave on medical grounds, as per A-6 dated 28-11-1996. Thereafter, A-7 dated 20-2-1997, the impugned order, was issued cancelling A-6 order and regularising the absence of the applicant from 11-9-1995 to 20-2-1996 as extraordinary leave on loss of pay for 161 days on private affairs.

3. The applicant has no grievance against A-6 order dated 28-11-1996. He is aggrieved by A-7 order dated 20-2-1997.

4. Respondents say that A-6 order was issued by mistake regularising the period of absence of the applicant and, therefore, A-7 order was issued. From A-4 and A-5 it could be seen that A-6 was issued only after having been convinced about the genuineness of the medical ground put forward by the applicant as the reason for the leave applied for. As per A-7, A-6 order has been reviewed. It is not known under what authority the Deputy Superintendent of Police, first respondent, has reviewed A-6 order. There cannot be an inherent power of review for the first respondent. He could get the power to review only if it is provided by the law. The learned counsel appearing for the applicant submitted that there is no provision of law

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which empowers the first respondent to review A-6 order. The learned counsel appearing for respondents could not bring to my notice any law which empowers the first respondent to review A-6 order and issue A-7 impugned order. The position is that the first respondent has issued A-7 order reviewing A-6 order without any legal basis and authority or jurisdiction.

5. It is stated in A-7 that the applicant has produced bogus medical certificates. If the authority concerned had any doubt regarding the genuineness of the medical certificates produced by the applicant, what should have been done by the authority concerned is to have referred the applicant to a Medical Board for examination. Respondents have admittedly not done that. Having not resorted to the said course, the first respondent now cannot turn round and say that the medical certificates are bogus. It is also not known on what basis the first respondent has arrived at the conclusion that the medical certificates are bogus. It is not enough for the first respondent to say that the medical certificates produced by the applicant are bogus. There should be convincing grounds to reach such a conclusion. In the absence of any reason, especially in the background of the fact that the medical certificates have been accepted and A-6 was issued, the stand of the first respondent in A-7 that the medical certificates produced by the applicant are bogus cannot be accepted. In A-7 it is also stated that the applicant has not submitted prescription, bills etc. A-5 gives clarification on this aspect. A-6 was issued after A-5. So, it could be well said that A-6 was issued after accepting A-5 in toto.

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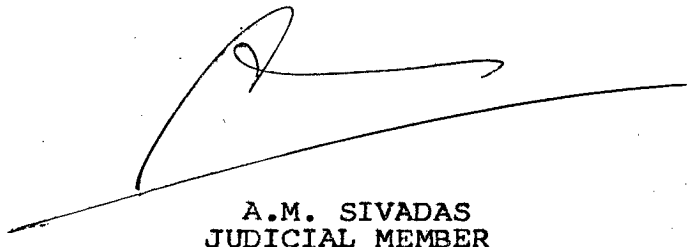
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6. It is stated in the reply statement that the Sub Inspector of Lakshadweep Special Branch was entrusted with the task of conducting an enquiry into the genuineness of the illness of the applicant. It is not known under what provision of law it was done. It is interesting to note at this juncture that the respondents admit in the reply statement that on enquiry conducted by the Sub Inspector of Lakshadweep Special Branch, the information received was only hearsay and the report was not satisfactory. The contents of the report, if any, of the Special Branch Sub Inspector is not known. On going through the pleadings and the annexures it appears to be a clear case where the first respondent, the Deputy Superintendent of Police, has acted without any authority and in an arbitrary manner without any jurisdiction probably due to his ignorance. That being the position, A-7, the impugned order, is liable to be quashed.

7. Accordingly, A-7 order dated 20-2-1997 is quashed. Consequently, A-6 order dated 28-11-1996 survives.

8. Original Application is disposed of as aforesaid. No costs.

Dated the 6th of August, 1997



A.M. SIVADAS  
JUDICIAL MEMBER

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LIST OF ANNEXURES

- Annexure A4: True copy of the letter  
No.18/202/73-Estt(Pol)/1074  
dated 15-7-1996 from the office  
of the 2nd respondent.
- Annexure A5: True copy of the reply of the letter  
Annexure A4 submitted by the applicant  
before the 2nd respondent dated 30-8-1996.
- Annexure A6: True copy of the Order by letter  
No.18/202/73-Estt(Pol)/2227 dated  
28-11-1996 issued by the 2nd respondent  
to the applicant.
- Annexure A7: True copy of the Order  
No.18/202/73-Estt(Pol)/642  
dated 20-2-1997 issued by the  
office of the 2nd respondent to  
the applicant.

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