

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 443 OF 2007

Friday, this, the 29th day of February, 2008.

CORAM :

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

R.Ayyappan Nair
"Rajalekshmi"
Payattuvara P.O, Balaramapuram Via
Trivandrum - 695 501
Sub Post Master *under order of transfer)
Vellayani, Trivandrum - 695 522

: Applicant

(By Advocate Mr.S.M.Prasanth)

vs.

1. Union of India represented by Secretary
Ministry of Communication
New Delhi
2. The Chief Post Master General
Kerala Circle, Trivandrum - 695 033
3. The Superintendent of Post Offices
Trivandrum South Division
Trivandrum - 695 014

: Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 29.02.2008, the Tribunal on the same day delivered the following :

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is that the respondents are not granting him leave due to him from 30.10.2006 to 22.10.2007.

2. The brief history of this case relevant for the disposal of the OA are that the applicant while working as Sub Post Master, Vellayani was transferred to Neyyattinkara on 17.10.2006. He did not join there and proceeded on leave for 10 days on medical grounds from 20.10.2006 to

29.10.2006 and the same was granted. On expiry of the leave period, he again applied for 21 days leave on medical grounds from 30.10.2006 supported by the Medical Certificate issued to him by Dr. Radhika Rani. R.K., Tutor, Department of Roganidans, Government Ayurveda College, Trivandrum. Thereafter, he applied for another 15 days commuted leave supported by the Medical certificates issued to him by Dr. S.V. Chitra, Medical Officer, Government Ayurveda Dispensary, Nemom. Again, he sought extension of leave on medical grounds with certificates issued to him by Dr. G. Chandra Kumar, Reader in Salyatantra, Government Ayurveda College, Trivandrum, Dr. Indu G Kumar, MD(Ay), Medical Officer, Government Ayurveda Hospital, Venganoor etc. Meanwhile he was also admitted in Ayurveda Medical College, Trivandrum from 05.03.2007 to 24.04.2007 for treatment for back pain. He was also advised rest for two weeks. After expiry of two weeks, he again applied for extension of leave stating that the back pain was continuing. All these applications were supported by advice of the Doctors for rest on the ground that he was suffering from "Kadeegraham" (back pain). Since the applicant has not been joining the new place of posting and has been submitting medical certificate one after another, the respondents vide Annexure A-2 (b) letter dated 20.12.2006 advised him to undergo 2nd medical examination on 27.12.2006, by the District Medical Officer (ISM), Trivandrum. After examining him on 04.12.2006 and 27.12.2006, the Chief Medical in-charge of ISM, Trivandrum also vide Annexure A-9 (b) letter dated 05.01.2007 informed the respondents that he had perused the concerned certificates and he was satisfied with the diagnosis and the advice given by the doctors in their certificates. Respondents have once again requested the District Medical Officer, Trivandrum (ISM) to examine the applicant once again and to give his opinion and the

District Medical Officer in turn, vide Annexure A-2 (c) letter dated 08.02.2007, directed the applicant to appear before him for medical examination on 20.12.2007 at 11 A.M. According to the applicant, he received the said letter only late in the same date and, therefore he could not be present before the Medical Officer on time. Though he reported at 4.30 P.M., the Medical Officer was not prepared to examine him and no further date was given to him. Thereafter, the respondents did not take any action to get the applicant medically examined but issued the impugned Annexures A-5, A-6 and A-7 memos dated 08.03.2007, 25.04.2007 and 11.05.2007 respectively. By the said memos, the Respondents held that applicant has been deliberately staying away from duty and treated the period from 30.10.2006 to 13.04.2007 as unauthorised leave and consequently as dies-non. However, the Applicant continued to remain absent and sent leave applications supported by the medical certificates from different doctors. Finally, the respondents themselves have changed the place of his posting from Neyyattinkara to Nemom vide Annexure A-11 letter dated 17.10.2007 and the applicant has joined duty there on 23.10.2007.

3. The contention of the respondents is that the majority of certificates were not genuine and the applicant has been submitting certificate only because he did not want to join at Neyyattinkara. The respondents also contended that the applicant was in collusion with the staff of the Medical Officer in not getting the letter from him to appear on 20.12.2007 for the 2nd medical opinion.

4. We have heard Mr.V.Sajith Kumar, counsel for applicant and Mr.Varghese John, learned counsel for respondents. The Courts and Tribunals are not the authority to certify whether the medical certificates

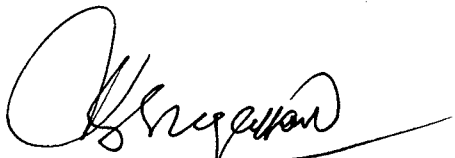
produced by the applicant were genuine or not. It is entirely for the Medical authorities to decide. However, we see that the alleged illness of applicant was merely back pain and the period he remained absent from duty coincides with his transfer to Neyyattinkara with effect from 17.10.2006 and cancellation of that order after a year on 17.10.2007. The whole of this one year, the applicant remained absent from duty with the support of the medical certificates issued to him during different spells by different doctors. The respondents have also not been following the prescribed procedure in the matter. They waited till 08.03.2007 to issue the Annexure A-5 letter treating his period of absence from 30.10.2006 to 04.03.2007 in 5 spells as unauthorised and as dies-non. When the applicant informed the respondents that he could not appear before the District Medical Officer on 20.02.1007 at 11 A.M as directed, because he got the letter late, the respondents should have again directed him once again to get him examined on another date and to satisfy themselves whether his continued absence was warranted or not. Respondents have rather kept quite and later on they themselves changed his transfer from Neyyanttinkara to Nemom vide letter dated 17.10.2007. The Applicant readily joined at Nemom, may be after getting a fitness certificate from one of the doctors under whom he was allegedly under treatment.

5. In the facts and circumstances of the case, we consider that only a competent medical authority can certify whether the applicant was required to remain absent from duty on medial grounds for the period from 17.10.2006 to 22.10.2007. The letter of District Medical Officer, Trivandrum dated 05.01.2007 (Annexure A-9 (b) also does not contain a certificate that the applicant was required to take rest for the period upto 27.12.2006, the date on which he has last examined. Respondents, are

therefore, directed to get the Applicant once again examined by the competent Medical Officer / Board and to obtain a certificate as to whether his absence from duty for the period from 17.10.2006 to 22.10.2007 was absolutely necessary for the alleged back pain being suffered by him. The Competent Medical Officer / Board also shall be requested to examine all certificates given to the Applicant by different Doctors for different spells advising medical rest to see whether they were justified in issuing such certificates to him. Respondents shall take appropriate decision regarding grant of leave to the applicant for the period from 30.10.2006 strictly on the basis of the advice received from the Competent Medical Officer / Board and convey the same to him within a period of three months from the date of receipt of this order. We, therefore, quash and set aside Annexures A-1 and A-2 orders and remit the case to respondents to take appropriate decision as per the aforesaid directions.

6. With the above direction, O.A is disposed of. There shall be no order as to costs.

Dated, the 29th February, 2008.


K.S.SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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