

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 6/2012

Wednesday this the 30th day of September, 2015
CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P.Gopinath, Administrative Member

G.V. Sudarshan S/o G. Veerappa,
aged 48 years, IDSE, AD (Design)
O/o CE(NW), Kochi, Naval Base Post,
Kataribagh, Kochi-4
residing at Qr.No.P/6, Nalinakshan,
Panampilly Nagar, Kochi

...Applicant

(By Advocate Mr. M.R. Hariraj)

Versus

1. Union of India, represented by the Secretary to Government of India, Ministry of Defence, New Delhi-110 001.
2. Chief Engineer, Andaman and Nicobar Zone, MES, Port Blair-744101.

...Respondents

(By Advocate Mr. N. Anil Kumar, Senior Central Govt. Panel Counsel)

This application having been finally heard on 21.09.2015, the Tribunal on 30.09.2015 delivered the following:

O R D E R

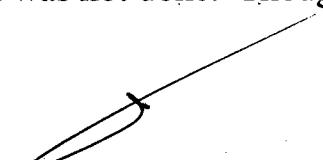
Per: Justice N.K.Balakrishnan, Judicial Member

The applicant challenges Annexure. A.1 order dated 6.8.2010 passed by the Disciplinary Authority imposing the penalty of reduction in rank and Annexure. A2 order dated 11.5.2011 on the review petition filed by the applicant which confirmed the order passed by the Disciplinary

Authority. The applicant was functioning as Joint Director (Planning) in the office of the Chief Engineer, A&N Zone, Portblair during the relevant period. On 28.10.2004 he submitted an application for leave for 15 days from 17.11.2004 to 1.12.2004. The applicant contend that he met with an accident and sustained injury on his back on 25.11.2004 and thus he submitted an application for extension of leave along with Medical Certificate showing the leave address as well. Again he submitted application for extension of leave to continue the treatment, as he was advised rest upto 8.12.2004, to which the applicant did not receive any response. He contends that on 1.1.2005 the respondents sent a telegram demanding the applicant to report back for duty but no such telegram was received by the applicant. (Only when it was produced in the disciplinary proceedings, it was found that the address in the telegram was wrong). Again the applicant submitted a representation for extension leave on 15.3.2005 and 4.6.2005. On 24.6.2005 he received a letter from the respondents . So many representations and applications were sent, according to the applicant. On 29.8.2007 a charge memo was issued to the applicant alleging unauthorized absence. The applicant was directed to appear for a preliminary hearing. The applicant requested that the hearing may be conducted at Bangalore but his request was turned down. The inquiry officer decided to proceed ex-parte. On 21.3.2009 on receipt of the Inquiry Officers resume, the applicant forwarded the medical certificate and scan

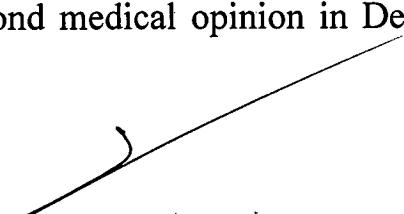
report. The applicant reported for duty on 7.4.2009 and attended the inquiry. On 18.2.2009 the presenting officer submitted brief. On 27.5.2009 the applicant submitted his defence brief. The inquiry report was submitted on 16.6.2009 and it was communicated to the applicant on 16.12.2009. Again on 23.2.2010 the missing pages of inquiry report were furnished to the applicant. According to applicant, in the meanwhile, he was subjected to second medical opinion and the Medical Board gave opinion to the effect that the leave availed is justified. On 6.8.2010 the penalty order was issued. Applicant submitted Review Petition on 15.10.2010 to reconsider the punishment in the light of the report of the Medical Board. Thereafter, applicant filed OA 212/2011. This Tribunal directed for early disposal of the Review Petition. Subsequently, on 11.5.2011 the Review Petition was rejected. Hence the applicant approached this Tribunal for the reliefs as stated above.

2. According to the applicant, the respondents were informed about the medical condition of the applicant and in such circumstances the respondents should have decided whether the applications for leave and extension of leave is to be granted or not. If they were having any doubt regarding the veracity of the claim, the employer should have referred the employee to second medical opinion. The authority ought to have addressed the medical authority requesting to constitute a medical board to examine the employee, but that was not done. Though the applicant was told that he



was referred to District Medical Superintendent, Bangalore, the applicant could not get a medical board constituted under the rules. It is further contended that the penalty was imposed on the applicant after the medical opinion was given by the GB Pant Hospital, Portblair. That certificate (Annexure. A.15) was available at that point of time and so it should have been considered by the Disciplinary Authority before finding the applicant guilty of misconduct. The rejection of the Review Petition stating that no new grounds are raised is also untenable. Since Annexure. A.51 was produced the review authority should have considered the same which was a material produced only in the review petition but it was not considered at all. Hence the applicant contends that the respondents did not apply their mind at all.

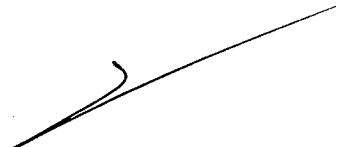
3. The respondents resisted the application justifying the disciplinary inquiry initiated against and penalty imposed on the applicant. It is contended that it was obligatory on the part of the applicant to inform about his illness (if actually he had any such illness) immediately on falling ill and his inability to join duty for the relevant period. His leave application was required to be recommended by a competent medical authority. Only if the controlling authority was convinced of the authenticity and genuineness of the medical certificate the leave applied for could have been sanctioned. Had the applicant intimated he could have been referred for second medical opinion in December, 2004 or January,



2005 itself. Respondents contend that the procedure prescribed under the CCS (CCA) Rules was followed in this case and that penalty imposed on the applicant is not disproportionate. It is further contended that the Review authority has considered all these aspects and so the applicant is not entitled to get any relief in this OA.

4. The learned counsel for the applicant has drawn our attention to so many aspects such as address in the telegram and other aspects to highlight his plea that the applicant was not issued any communication regarding the rejection of the application for leave submitted by the applicant. So many other aspects were also pointed out. The learned counsel mainly points out that Annexure. A.51 the second medical opinion was available and it was specifically referred to in the Review Petition but in Annexure. A.2 order no mention has been made about Annexure. A.51. Annexure.A1 the order of Disciplinary Authority was passed on 6.8.2010. Since the President of India is the Disciplinary Authority who imposed the penalty of reduction in rank to the post of AEE until he is found fit by the competent authority to the post of Executive Engineer, a Review Petition was filed. Annexure. A2 is the order passed by the President rejecting the Review Petition .

5. It is submitted by the learned counsel for the applicant that Annexure. A2 order is only the re-production of the facts narrated in Annexure.A.1 and there was no proper application of mind at all. At any



rate, according to learned counsel, the non-consideration of Annexure. A51 medical opinion of the Board would clearly justify the applicant's case that Annexure. A2 order was passed mechanically without application of mind. Annexure.A1 order was passed on 6.8.2008. Annexure.A2 order was passed on 11.5.2011. Annexure.A51 medical certificate was issued by the Medical Board on 19.6.2009.

6. It is seen stated that the applicant was suffering from "diffuse disc bulge" during the period of leave as per record. It is further certified that the above mentioned pathology can cause prolonged nagging, at times incapacitating back ache requiring prolonged treatment conservative in nature, as there was no definite surgical treatment indicated. Hence it was certified that the leave availed by the applicant was justified. According to the learned counsel for the applicant, since Annexure.A51 was obtained on 19.6.2009 it should not have been omitted to be considered by the Review Authority especially because a specific mention was made in the Review Petition regarding the second medical opinion expressed in Annexure. A 51. The order Annexure. A2 does not state anything regarding Annexure. A.51, which justifies the grant of leave applied for by the applicant. Since that has not been done, the matter has to be directed to be reconsidered by the Review Authority.

7. Hence Annexure. A2 order passed by the Review Authority is set aside. The respondents are directed to dispose of the Review Petition filed

by the applicant especially taking note of Annexure. A.51 certificate produced by the applicant. The Review Petition as aforesaid shall be disposed of within two months from the date of receipt of a copy of this order.

8. O.A is disposed of accordingly. No order as to costs.



(P.Gopinath)
Administrative Member



(N.K.Balakrishnan)
Judicial Member

kspps