

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 532 of 2006.

this the 11th day of July, 2008

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

A. Sasidaran
Sorting Assistant
RMS, Thiruvananthapuram.

Applicant

By Advocate Mr. K.T. Shyam Kumar

Vs.

- 1 Union of India represented by its
Secretary, Ministry of Communications
New Delhi-1
- 2 The Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.
- 3 The Senior Superintendent of Post Offices
RMS TV Division, Thiruvananthapuram.

Respondents

By Advocate Mr. Sunil Jose, ACGSC

The Application having been heard on 3.6.2008 the Tribunal delivered the following :

O R D E R

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicant in this OA is working as a Sorting Assistant in Railway Mail Service, Kollam. In 1996 he was elected as an office bearer of the Union and in accordance with the facility given to office bearers of the Union he was transferred to Trivandrum for one year. He was kept in Trivandrum till the year 2001 as he continued to be an office bearer of the Union. In the year 2001 he ceased to be an office bearer of the Union. He

was thereafter transferred to Kollam vide order dated 7.1.2002. The applicant challenged the transfer in this Tribunal through OA365/02. The Tribunal dismissed the OA. Thereafter the applicant submitted a representation to the authorities stating that the transfer to Kollam had caused him difficulties as his son was studying in the college in Trivadnrum. The applicant was allowed to continue in Trivandrum till March 2002. Thereafter the applicant was directed to join in Kollam vide order dated 1.5.2002. This was challenged by the applicant in OA66/03 which also came to be dismissed by this Tribunal. Meanwhile the applicant has been submitting applications for medical leave along with medical certificates issued by ayurveda doctors of Government Ayurveda College. The applicant has requested for medical leave in different spells from 24.10.2002 to 2.4.2003. He joined duty Kollam at on 3.4.2003. The applicant's request for medical leave in various spells were referred to the District Medical Officer (Ayurveda) for second medical opinion. Vide his letter dated 9.1.2003 the DMO opined that the medical certificates do not appear to be genuine. Thereafter the applicant was asked by the respondents to apply for extraordinary leave for the period from 14.11.2002 to 2.4.2003 or explain why the period from 14.11.2002 to 2.4.2003 should not be treated as 'Dies Non'. The applicant did not apply for extra ordinary leave, but submitted a representation seeking the grounds on which the DMO came to the conclusion that the certificates are not genuine. Thereafter on 16th April 2004 the respondent No.3 issued a detailed order (Annexure A-3) giving the entire background and treating the period of unauthorised absence between 14.11.2002 to 2.4.2003 as 'Dies Non'. An appeal submitted by the applicant was rejected by the Director of Postal Services vide his order dated 31.5.2005 (Annexure A-5). Aggrieved by the order to treat the period as Dies Non and the rejection of his appeal, the



applicant has filed this OA seeking the following reliefs:

- (i) Set aside Annexure A3 and A5 orders issued by the 2nd and 3rd respondents retrospectively.
- (ii) Direct the respondents to treat the period of leave availed by the applicant from 14.11.2002 to 2.4.2003 as eligible leave availed on medical grounds
- (iii) Award the cost of this proceedings

2 The respondents have filed a reply statement. It is contended on behalf of the respondents that the respondents have given due to consideration to the applicant as a Union office bearer and retained him in Trivandrum between 1996 and 2001. After the OA 365/02 filed by the applicant against his transfer was dismissed by the Tribunal the applicant was directed to join duty at Kollam. The applicant went on seeking medical leave in short spells with medical certificates. It was therefore decided to refer the various medical certificates issued by the doctors at Govt. Ayurveda College to the District Medical Officer (ISM) for second opinion. After examining the applicant the DMO has reported that the medical certificates are not genuine (R3). The applicant was given the option of applying for extra ordinary leave or explain why the unauthorised absence should not be treated as Dies Non. The allegations against the DMO is baseless.

3 We have heard the learned counsel for the applicant Ms. Sindhu and the learned counsel for the respondents Shri Sunil Jose. We have also perused the records carefully.

4 The issue for consideration is whether the respondents are justified in treating the period 14.11.2002 to 2.4.2003 as Dies Non. The CCS Leave

Rules provide for taking second medical opinion. The respondents have resorted to this provision and sought second medical opinion. The relevant portions of the CCS (Leave Rules) Rule 19 (3) to 19(5) are extracted below:

"(3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.

(4) It shall be the duty of the Government Medical Officer referred to in sub rule (3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose may either require the applicant to appear before himself or before a Medical Officer nominated by himself.

(5) The grant of medical certificate under this rule does not in itself confer upon the government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited."

It would be seen from the above extract that the Government Medical Officer who has been asked to give second medical opinion should express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended.

5 The letter written by the District Medical Officer (ISM), after examining the applicant, reads as follows:

GOVERNMENT OF KERALA
Office of the District Medical Officer (ISM)
Station: Thiruvananthapuram
Date: 9.1.2003

From

The District Medical Officer (ISM)

To

The Senior Superintendent
Office of the Senior Superintendent
RMS TV Division
Thiruvananthapuram-695 033

Sir,

Sub: Second Medical Examination regarding C/o
Shri A. Sasidharan SA

Ref: Your letter NO. 19/101 L dated 18.12.2002

Your attention is invited to the letter under reference. Shri A. Sasidharan, Sorting Assistant, RMS TV Division has attended for Second Medical Examination on 6.1.2003. Genuineness of the Medical certificates submitted by the said official are doubtful. It is informed that the Medical Certificates are submitted only for the purpose of taking leave.

Yours faithfully,

Sd/-
District Medical Officer (ISM)
Thiruvananthapuram.

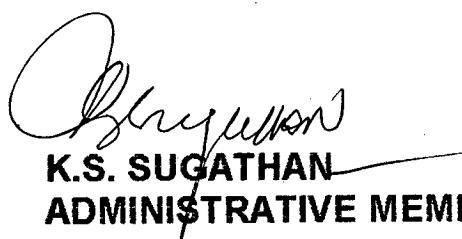
It is seen from the above letter of the DMO that it does not express an opinion regarding the illness or about the duration of leave that can be justified, if at all there is an illness. The letter merely says that he doubts the genuineness of the certificates. Such a letter cannot be construed as a medical opinion as contemplated in the CCS Leave Rules. Therefore based on the letter of the DMO the respondents could not have proceeded to treat the period as Dies Non. It was open to the respondents to refer the matter back to the DMO for a proper medical opinion as contemplated in the Leave Rules. But this was not done.

6 A careful reading the appellate order dated 31.5.2005 (Annexure A5), particularly paragraph 4 of the order, shows that the respondents were influenced more by the conduct of the applicant in disobeying the directions of the superiors and joining duty at Kollam. Such misconduct may perhaps be a valid ground for proceeding departmentally. But that should not influence the decision on granting or refusing leave requested along with the prescribed medical certificate. We are therefore of the considered opinion that the impugned orders treating the period of 14.11.2002 to 2.4.2003 cannot be sustained.

7 For the reasons stated above, the OA is partly allowed. The impugned orders dated 16.4.2004 and 31.5.2005 are quashed and set aside. It is

however open to the respondents to obtain second medical opinion from the competent Government Medical Officer afresh and decide the matter appropriately. No costs.

Dated 11th July, 2008.



K.S. SUGATHAN
ADMINISTRATIVE MEMBER



K.B.S. RAJAN
JUDICIAL MEMBER

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