

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 575/2010

Monday, this the 31st day of October, 2011.

CORAM

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

V.D.Varkey,
Telecom Mechanic, BSNL,
O/o the Divisional Engineer,
Broad Band, Thrissur.Applicant

(By Advocate Mr S.Krishna Moorthy)

v.

1. Union of India represented by the
Principal General Manager,
Telecom, Thrissur.
2. The General Manager(Development),
BSNL, Thrissur-680 022.
3. Deputy General Manager(Planning),
BSNL, Thrissur.
4. Divisional Engineer, Broad Band,
Central Telephone Exchange, Thrissur.
5. Divisional Engineer, Switching Installation,
BSNL, Thrissur.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 31.10.2011, the Tribunal on the same day delivered the following:

ORDER


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

The matter is short and simple. The applicant, a telephone Mechanic in the Office of the Divisional Engineer (DE) Broad Band, BSNL. Thrissur, was working under the fifth respondent. As he fell ill, he had initially applied for leave on medical grounds from 10-08-2009 to 13-08-2009. This leave was sought to

be extended by some more days upto 18-09-2009. It is the case of the applicant that all the leave applications were sent to the said fifth respondent by the applicant. When he reported for duty before the fifth respondent, he was informed that he stood transferred to Broad Band Division under the fourth respondent. It is the case of the applicant that he was not served with any copy of the order of transfer nor was he relieved. Thus, on his reporting to the fourth respondent, he was permitted to join on 18-09-2009. The applicant was later, after issue of a show cause notice (and on consideration of the representation against the show cause notice) informed by the authorities that the period of absence from 14-08-2009 to 13-09-2009 was treated as dies non, vide Annexure A-5 impugned order dated 16-10-2009. The applicant exhausted the administrative remedies by way of appeal, which was rejected vide the impugned Annexure A-7 order dated 07-12-2009. Review application filed by the applicant was also rejected, vide impugned Annexure A-9 order dated 27-01-2010. The applicant has filed this O.A. seeking the quashing of the aforesaid impugned orders (Annexure A-5, A-7 and A-9) and for a direction to the respondents to treat the period of absence from 14-08-2009 to 18-09-2009 as leave on medical ground and disburse the salary for the aforesaid period.

2. Respondents have contested the O.A. They have maintained that the applicant's leave application was not received by any authority on time. Again, the transfer order sent to the applicant's residence returned undelivered as 'unclaimed'.

3. The applicant has filed his rejoinder reiterating his stand and stating that in so far as the alleged return of the registered post, he had stated that the said registered letter dated 21-08-2009 was not delivered to the applicant as the



applicant had gone to see the doctor. Again, no intimation regarding the registered letter was notified by the postman to claim the registered letter from the post office. As regards forwarding of the medical leave applications, the applicant obtained some information and made the same available vide Annexure A-9 (which should be A-10, as AnnexureA-9 is impugned review order). This contains the statement that leave applications from 14-08-2009 till 18-09-2009 were found as a bunch on the table of SDE (SW) Installation, Thrissur on 15-09-2009 and the same had been handed over to DE, Broadband, Thrissur on the same day.

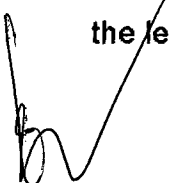
4. Counsel for the applicant argued that the following two facts would go in favour of the applicant:-

(a) That his medical leave applications were sent and were received by Respondent No. 5.

(b) The applicant was totally unaware of the issue of the Transfer order and relieving order.

5. The counsel argued that the period involved is for a month plus and the entire period has been supported with medical certificate. The applicant cannot be found fault with to disentitle him to the absence being regularized as leave on medical ground and to the disbursement of salary for the period from 14-08-2009 to 18-09-2009.

6. Counsel for the respondents submitted that the timing of the applicant's proceeding on leave would go to show that the applicant's attempt to have the leave sanctioned on medical leave was not genuine. He has further stated that the leave applications had not been submitted on time.



7. Arguments were heard and documents perused. The admitted fact is that as on 10-08-2009 the applicant applied for 3 days leave which was sanctioned. This leave was extended thereafter for a further period in 'instalments' to cover a total of 36 days. It is not the case of the respondents that any communication was issued to the applicant to join duty as he was absenting without due sanction of leave. Though according to the respondents the applicant was transferred on 01-08-2009 and relieved by an order dated 10-08-2009, no documentary evidence could be produced by the respondents to confirm due service of the order. The applicant had been attending regularly the office till 09-08-2009 and it was only on 10-08-2009 that he had applied for 3 days leave. The authorities could have easily served upon the applicant the order of transfer and relieved him. Had the respondents served the order of transfer on time, there was no necessity for them to despatch the same again on 21-08-2009 when the applicant was not attending the office. The said communication did not, admittedly reach the applicant. Thus, it can be safely held that the transfer order and relieving order were not served at the appropriate time. Yet, the applicant on his being found medically fit to attend the office, joined the new duty place on his having been accordingly told by the previous higher authority when he went to report before him on 18-09-2009.

8. As regards the medical certificates, the RTI information vide Annexure A-10 does reveal that the applications for medical leave reached the authorities before the applicant could report for duty. Obviously, the applicant who was serving under Respondent No. 5 would have submitted the applications only before that authority. The same was thereafter forwarded to the fourth respondent by the said Respondent No. 5.

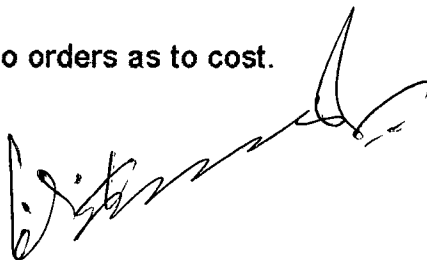
9. Thus, no fault could be found against the applicant. The decision to treat



the period of absence for the period from 14-08-2009 to 18-09-2009 vide Annexure A-5, A-7 and A-9 are therefore, liable to be quashed and we accordingly do so. It is declared that the applicant is entitled to have the period of absence from 14-08-2009 to 18-09-2009 as leave on medical grounds. Respondents are directed to accordingly regularize the period of absence of the applicant for the aforesaid period and also disburse the salary and allowances due for that period to the applicant. The O.A. is allowed on the above terms. This order shall be complied with, within a period of eight weeks from the date of receipt of a copy of this order.

10. Under the circumstances, there shall be no orders as to cost.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER

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