

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.109/2003.

Tuesday, this the 23rd day of August, 2005.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

A.Abdul Rahiman,
Sorting Assistant,
HSG II (BCR), Railway Mail Service,
TV Division, Kollam.

Applicant

(By Advocate Shri Thomas Mathew)

Vs.

1. Senior Superintendent,
Railway Mail Service,
TV Division, Trivandrum.
2. Director of Postal Services,
Southern Region, Office of the
Chief Postmaster General,
Kerala Circle, Trivandrum.
3. Union of India represented by
its Secretary,
Department of Posts,
New Delhi.

Respondents

(By Advocate Smt.K.Girija, ACGSC)

O R D E R

HON'BLE MR.KV SACHIDANANDAN, JUDICIAL MEMBER

The undisputed facts in this case are that the applicant has applied for leave for the period from 5.12.2000 to 18.12.2000 (14 days) in two spells which was rejected by the respondents by the impugned orders A7 dated 18.12.2001 and A-9 dated 8.5.2002. Aggrieved by the said action on the part of the respondents the applicant has filed this O.A. seeking the following main reliefs:

- i) Call for the records leading to the issue of Annexure A7 and A9 and quash the same;
- ii. declare that the action on the part of the respondents denying grant of leave applied for the period from 5.12.2000 to 18.12.2000 supported by the Medical

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Certificates is illegal, arbitrary and discriminatory violating Article 14 of the Constitution and direct the respondents to regularise the period from 5.12.2000 to 18.12.2000 as leave due to the applicant with all consequential benefits;

2. The respondents have filed a reply statement supporting their action in denying grant of leave applied for by the applicant for the period from 5.12.2000 to 18.12.2000 on the ground that, the recognised Federations in the Postal Department viz., NFPE, FNPO, BPEF had given notice for All India Indefinite Strike from 5.12.2000. Though notice was given in this respect, the department has adopted strategies and preparations in advance to tackle the strike by a communication dated 17.11.2000. According to the respondents the applicant was an active member of the Union. It was stated in the reply statement that, specific instructions were given in Item No.7 of the Notification (Annexure R1(a)) that, no leave should be granted to any of the employees from 4.12.2000.

3. The applicant has filed a rejoinder reiterating the same contentions raised in the O.A. and submitting that he was really suffering from serious illness and the leave applied for should have been granted.

4. The respondents have filed an additional reply statement contending that, though he is said to be on prolonged illness, he had never applied for long leave in any of the succeeding or preceding winter season. Some of the requests for leave were granted on account of their merit after proper inquiry by competent authority. The applicant cannot claim that he should be granted leave, as some officials were granted leave. It is the discretion of the leave sanctioning authority.



5 An additional rejoinder was filed by the applicant contending that "the power to arrive at a finding of the applicant's illness rests with the medical authorities and not the SRO, the unit officer or any body else." The respondents have never suspected the genuineness of the medical certificate produced by the applicant and they should have referred the matter for second medical opinion as provided under Rule 10(3) of FR & SR (Part III).

6. Mr.Thomas Mathew, learned counsel appeared for the applicant and Smt.K.Girija, learned ACGSC appeared for the respondents. Learned counsel for the applicant submitted that the period of absence of the applicant ordered to be treated as 'Dies-non' under the principles "No Work-No pay", which is against the facts, circumstances and legal principles laid down on the subject. While passing A-7 order, no consideration has been given and 96 employees have been treated alike and their absence was declared as 'Dies-non'. The individual appeal(A8) of the applicant was also rejected without application of mind.

7. Counsel for the respondents on the other hand persuasively argued that, a show cause notice was issued to the applicant and thereafter a decision has been entered into. They also contend that, the applicant was on leave from 5.12.2000 to 18.12.2000, which is a clear indication that, he has participated in the strike along with others and therefore, the rejection of the applicant's claim is justified.

8. We have heard the counsel on both sides and given due consideration to the materials, evidence and arguments advanced by them. The case of the applicant is that, he was suffering from Osteo Arthritis (Santhivatham) and was under treatment of




different Doctors from 1999 onwards, and infact, he was an employee who discharged from Army Postal Service on medical invalidation. He has produced A1, A2, O.P.Tickets and prescriptions and he was advised by the Doctors to take complete rest from 4.12.2000 and therefore, he applied for leave from 5.12.2000 to 18.12.2000 considering the illness. He was not engaged for duty in any unit of Kollam RMS from 5.12.2000 onwards. It was an incident that certain employees commenced strike on 5.12.2000 and ended after two weeks. He had given an undertaking prior to the commencement of the strike that, he would not be a participant in the strike. To the show cause notice he has also given a reply by A-4 dated 24.1.2001, reiterating that he had not participated in the strike but was unable to attend the duties because of his illness. Therefore, he has submitted a leave application, but finally it was ordered that his leave should be considered as 'Dies-non'. No opportunity of personal hearing was granted to him, but, issued a common order dated 18.12.2001(A7) showing his name also along with 95 others who have participated in the strike and treating his absence as 'Dies-non', which has resulted in grave miscarriage of justice. From the pleadings we find that, the respondents were given specific instructions that, no leave will be granted to any of the employees from 4.12.2000. But he has applied for the leave and remained absent. The duration of leave applied for is for 14 days. He has no case that he was hospitalised even though the treatment was prolonged for 14 days. He applied for leave in two spells. The 1st spell was for 9 days from 5.12.2000 to 13.12.2000 expecting an early withdrawal of strike and the 2nd spell was from 14.12.2000 to 18.12.2000 and he joined duty on 19.12.2000, i.e. the very next day the strike was called off. The leave application submitted by the applicant on 4.12.2000 was only to escape from the penalty on account of

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participation in the strike. The applicant and two other employees viz., S/Shri N.K.Mani and O.George were given leave application. There are similarities in the submission of application for leave by these officials. They have attended the same hospital and their OP ticket Nos. are almost consecutive serial Nos. and the leave spells are the same. Though A-7 is a common order, the case of the applicant along with other two employees who were similarly placed, was dealt with separately, under Part II of the order. The facts submitted by them are not correct. They absented deliberately and wilfully in order to participate in the strike.

9. The fact remains that the applicant was on leave from 5.12.2000 to 18.12.2000 for which he has made a leave application and medical certificates. On going through the copies of medical certificates produced by the applicant (Annexure A1 & A2), it could be seen that, those were issued by the competent medical practitioners and the genuineness of which has not been doubted. The fact that he has availed leave during the strike period, can only be an accident. A-7 is the impugned order pertaining to 93+3 employees whose names have been placed in Schedule I&II in which 93 employees were admittedly participated in the strike and no medical certificate was produced in their case. Whereas in the case of applicant, a declaration was made by him that, he would not participate in the strike as he does not belong to any union and accordingly, he did not participate. Therefore, we have absolutely no reason to doubt the bonafide and integrity of the applicant. Counsel for the applicant has quoted Rule 19(3) which is quoted below:



"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."

10. If the medical certificate has been doubted, as per the above provision the respondents should have referred the matter for the second medical opinion at the earliest possible date, which has not been done in this case. Counsel for the respondents has invited our attention to Rule 5 of the said section which reads as follows:

"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."

11. We agree with the proposition made by the counsel. The genuineness of the medical certificates are not doubted by the respondents at any point of time, except in the reply statement. On a perusal of the copies of the Medical Certificate produced in the O.A., we find that the same was issued by the appropriate authority. It is also urged by the counsel for the applicant that this has been submitted in the correct form. Even though the respondents has averred in the reply statement to discredit the veracity of the certificate, we want to make it clear that, we are not sitting on judgement on such certificate, since credibility of the certificate is not disputed. Since the leave application has been submitted in time, we are of the view that, the applicant has neither any intention to participate in the strike nor any willful absence from duty. We are also not happy on the averments/submissions made in the reply statement that, Osteo Arthritis could not be a reason for taking leave. This averment has been made by the respondents without any medical advice or verification of facts. The order under challenge has

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been passed in terms of FR 17-A. It is very clear that only when a person is wilfully absented from duty the provisions of FR 18 can be invoked. In this case prior to the leave application, it is borne out from the records that, the applicant was suffering from Osteo Arthritis and the fact remains that, the applicant was discharged from Army on medical invalidation before joining this department. The respondents has not given any reason nor they were able to produce any document in proof to show that the applicant was a member of any particular union and participated in the strike. The circumstances reveal that the applicant has not participated in the strike and he is not even a member of any Union. Therefore, we conclude that, the applicant had neither participated in the strike nor he was wilfully absented from duty. In these circumstances, the impugned order A-7 as far as the applicant is concerned cannot sustain and the rejection of his leave application without proper application of mind is untenable.

12. In the result, the application is allowed. We set aside A-7 and A9 impugned orders as far as the applicant is concerned and direct the respondents to grant consequential benefits flowing out of this order. The period under dispute may be regularised by granting leave to his credit. The above exercise shall be completed as expeditiously as possible and issue a speaking order and communicate the same to the applicant within a period of four months from the date of receipt of a copy of this order. In the circumstances, no order as to costs.

Dated the 23rd August, 2005.


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER

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