

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 111/90
T. A. No.

199

DATE OF DECISION 19.4.91

K.Krishnan Nair _____ Applicant (s)

M/s.G.P.Mohanachandran,K.R.Haridas & _____ Advocate for the Applicant (s)
M.Jayachandran
Versus

Administrative Officer I(EST) _____ Respondent (s)
VSSC,Trivandrum-22 and four others

Mr.N.N.Sugunapalan,SCGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 6.2.1990 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as a Tradesman in the Vikram Sarabhai Space Centre (VSSC), Trivandrum has prayed that the impugned order dated March 22, 1989 at Annexure-A4 treating his absence for 15 days as unauthorised and as 'Dies-Non' and denying him the pay and allowances for this period be set aside and the respondents directed to treat this period as on leave with such pay and allowances as are admissible to him. The material facts of the case are as follows.

2. Between 8.8.88 and 19.9.88 the applicant absented himself from duty for certain days totalling to 15 days without getting prior sanction of leave. In some cases he applied for leave after absence and on certain occasions he did not even submit the leave application. The position can be tabulated as follows.

2

No of days	from	to	Remarks
1	on 08.8.88	-	Remained absent unauthorisedly and no leave application submitted.
1	on 10.8.88	-	-do-
1	on 12.8.88	-	-do-
3	17.8.88	19.8.88	Leave application submitted on 13.9.88. Leave not approved, since the absence was unauthorised and no intimation was given before availing leave.
1	on 25.8.88	-	Remained absent unauthorisedly and no leave application submitted.
2	01.9.88	2.9.88	Leave application submitted on 13.9.89. Leave was not approved since the absence was unauthorised and no intimation was given before availing leave.
4	06.9.88	9.9.88	-do-
1	on 15.9.88	-	Remained absent unauthorisedly and no leave application submitted.
1	on 19.9.88	-	-do-

As a matter of fact he was absent for two further days on 22nd and 23rd September 1988 and later applied for leave on medical grounds supported with medical certificate. For all these 17 days of absence without prior sanction of leave he was served with notices dated 1st November, 1988 and 2nd November, 1988 (Annexures A1 and A2) to explain why this period of unauthorised absence should not be treated as 'Dies Non' and he was also given an opportunity to be heard in person. The respondents issued a further order dated December 6, 1988 (Annexure A3) indicating that the competent authority had decided to treat the above period of 17 days of absence as 'Dies-Non' with proportionate deduction in his pay and allowances for the period. On his representation, the Annexure-A3 order of 6th December, 1988 was superseded by the impugned order dated 22nd March, 1989 by which 2 days of absence on 22nd and 23rd of September, 1988 was treated as on eligible leave and the remaining 15 days of absence was treated as 'Dies-non' with proportionate deductions in his pay and allowances. His further



representation dated 29.5.1989 and the reminder dated 21.8.89(Annexure-A7) having brought out no results he moved this Tribunal by this application.

3. The applicant's contention is that the 1st respondent, i.e., the Administrative Officer, VSSC who passed the impugned order was not competent to pass the order as he was not the disciplinary authority nor the leave sanctioning authority or controlling authority of the applicant. He has also argued that the order treating the period of absence as 'Dies-non' was issued more than seven months after he submitted the leave application and had ^{been} ~~the /~~ informed in August and September, 1988 as and when he applied for the leave that his leave would not be granted or further applications for leave would not be entertained, he would not have absented himself on the bonafide belief that his leave applications would be allowed. He had put in 22 years of service and had worked in the Indian Army for 18 years. He had sufficient leave to his credit and did not avail of leave unnecessarily but for urgent domestic affairs which had to be attended to personally by him. He indicated that valid reasons were furnished in all the leave applications. He has also argued that by issuing two show-cause notices, the respondents have betrayed non-application of mind in his case. He has also argued that his appeal and representations have not been considered according to the rules and no enquiry was conducted about the bonafide reasons of the applicant.

4. The respondents have stated that the applicant has been a habitual absentee and frequently absenting himself from duty unauthorisedly without any information or intimation to the Section concerned. He had not given any prior intimation about his absence and seldom applied for leave in advance. This habit of the applicant had been causing disruption of his work in the Section and any amount of counselling and warnings had no effect on him. From the tabular statement(as indicated earlier in this judgment) it is clear that he submits his application only after availing of the leave. Further he had already availed of 11 days out of the entitlement of 12 days of casual leave by 27.7.88 and his further applications for casual leave was inconsequential. For certain periods of absence he did not even apply

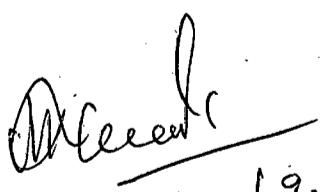
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for any leave. The respondents have firmly averred that in response to the show-cause notices the applicant neither presented himself for personal hearing nor submitted any explanation for his unauthorised absence. The competent authority decided to treat the period of absence as 'Dies-non' under F.R.17-A(iii). On the basis of his representation his case was further reconsidered and it was decided to treat 2 days of absence on 22nd and 23rd of September, 1988 as leave on medical grounds. They have further stated that his representation dated 29.5.89 at Annexure-A6 and addressed to the Chairman, Indian Space Research Organisation was sent back to the VSSC with the direction that it should be treated as a Review Petition and considered by the Director, VSSC. They have stated that before the Director could take a final decision, the applicant moved the Tribunal. They have stated that the applicant had been involved in a number of disciplinary proceedings and has started misbehaving with his superiors. In the rejoinder the applicant has argued that "there is no practice or rule that prior application is to be submitted". He has asserted that he appeared in person before the Administrative Officer-II(Est) on 10.11.1988 when the Administrative Officer-I was also present. In the additional counter affidavit the respondents have stated that between 1.1.88 and 31.7.88, the applicant had availed of 11 days of casual leave out of 12 and earned leave on 13 occasions and commuted leave twice. On all these occasions he never applied for leave in advance or gave prior intimation to office. They have drawn attention to Rules 8 and 16(1) of the C.C.S(Leave)Rules stipulating that no leave shall be granted until a report regarding its admissibility is obtained. They have argued that it is inherent in this rule that leave application should be submitted in advance for obtaining the admissibility report. They have also enclosed copy of circulars dated 14.4.81 and 13.8.81 directing the employees that "in the interest of work they should not remain absent from duty without prior approval/sanction of leave". They have also referred to the forms of warnings at Annexures-R8 and R9 in cases of frequent absence on leave, directing the employees to plan their leave so that work is not disrupted.

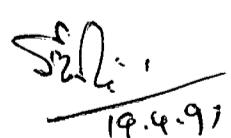
5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is transparently clear

from the documents that on practically all the occasions during 1988 the applicant absented himself without even applying prior to his absence much less getting prior sanction. During the period from 8.8.88 to 19.9.88 he did not apply for leave at all to cover his absence on 8.8.88, 10.8.88, 12.8.88, 25.8.88 and 15.9.88. All the arguments advanced by the applicant projecting dire urgency which prevented him from applying in advance fall flat in so far as his failure to apply even after availing of the leave is concerned. It is an inherent obligation under service discipline to get prior sanction before absenting oneself from duty. In an organisation like the Space Centre the need for such a discipline is much more than in a routine type of office. The contention of the applicant that had the department intimated him any time about non-sanction of his leave he would not have persisted in taking leave without applying. Such an argument cannot be countenanced from a disciplined Government servant. It is the duty of the Government servant to ensure that leave is granted to him before he avails of the same. The respondents have clearly indicated that the decision to treat the period of absence as 'Dies-non' was taken by the appointing authority. This is correct in accordance with Explanation 2 below F.R.17-A. The show-cause notice given to him at Annexure-A1 is sufficient compliance of the principle of natural justice. He himself has conceded that he appeared in person before the Administrative Officer on 10.11.88. In any case reasonable opportunity was given to him to defend himself against the proposal to treat the period of absence as 'Dies-non'.

6. In the conspectus of facts and circumstances we do not see any force in the application and dismiss the same. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member

19.4.91


19.4.91
(S.P. Mukerji)
Vice Chairman