

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 129 of 2001

Wednesday, this the 24th day of April, 2002

CORAM

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

Dr. K.P. Hamzakoya,
Senior Medical Officer,
Community Health Centre, Amini Island,
Union Territory of Lakshadweep.

Applicant

[By Advocate Mr. P.K. Ibrahim]

Versus

1. Union of India represented by the Secretary,
Ministry of Health,
Government of India,
New Delhi.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
3. The Director,
Directorate of Medical & Health Services,
Union Territory of Lakshadweep,
Kavaratti.

Respondents

[By Advocate Mr S. Krishnamoorthy, ACGSC (R1)]
[By Advocate Mr S. Radhakrishnan (R2 & R3)]

The application having been heard on 27.3.2002, the
Tribunal delivered the following on 24.4.2002:

O R D E R

HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

Applicant is a Senior Medical Officer at the Community Health Centre, Amini Island. It is contended that he was not provided with any accommodation at Amini. His wife and children were compelled to be put up at Kalpeni Island with her parents. His parents were also away at Calicut. His house was under construction at Kalpeni. There was nobody to take care of them at Kalpeni when his wife and youngest child fell ill.



Therefore, his presence was immediately required at Kalpeni. In the circumstance, he sent a telegram and fax message to the Director of Medical and Health Services, Kavarathi Island on 27.11.99 [Annexure A-1] requesting for 8 days' casual leave with holidays and restricted holidays to proceed to Kalpeni 'by next available conveyance' and also apprised him about the urgency. The next available conveyance was on 1.12.99. The request for casual leave was not rejected. Hence the applicant entered on casual leave on 1.12.99. Before entering on casual leave, he ensured that Dr.K.Attakoya, Senior Physician and Medical Officer In-charge joined duty on 1.12.99 itself. Thus the strength of staff available before his entering leave could be maintained. He submitted that the strength was further improved by Dr.M.P.Basheer who availed leave without permission joined duty on 7.12.99. While so, Dr.K.P.Muthubi who was given casual leave on 16.12.99, was put on duty at the Primary Health Centre, Kiltan on 20.12.99 with full charge as per Police Wireless Message dated 20.12.99 [Annexure A-2]. Applicant, however, offered to join duty, if his presence is still required in public interest and the strength of 3 doctors are not sufficient at the centre, as per Fax message dated 7.12.99 [Annexure A-3]. It is said that Annexure A-3 was not replied either by rejecting the request for earned leave or by directing him to rejoin duty. However, he received a communication dated 13.1.2000 requesting him to join duty. He replied that his presence is very much required and he may be permitted to join at Kalpeni since another doctor at Kalpeni is ready to go to Amini as per communication dated 13.1.2000 [Annexure A-4]. There was a request from the Medical Officer In-charge at Amini to post a doctor at Amini. The applicant could have been allowed to join duty at Kalpeni by sending somebody from Kalpeni to Amini in response to his own request, but the Directorate of Medical and Health Services insisted the



applicant to join duty and hence he joined on 1.2.2000 despite odds and compelling circumstances requiring his presence at Kalpeni. After rejoining duty, he applied for regularizing the period of his absence from 1.12.99 to 31.1.2000 as the department had not rejected his request for earned leave and orders are pending. The 3rd respondent, in the meantime, issued an Office Memorandum dated 28.2.2000 [Annexure A-5] alleging that he remained absent from duty unauthorizedly and asked to submit his explanation within 7 days for not taking action against his unauthorized absence. Applicant submitted his explanation dated 13.3.2000 explaining the circumstances and requested his indulgence to drop all actions and orders regularizing the period from 1.12.99 to 31.1.2000. However, the 3rd respondent without considering any of his contentions, rejected his explanation as not satisfactory and issued a show cause dated 1.4.2000 [Annexure A-6] asking to show cause as to why the period of his unauthorized absence from duty should not be treated as 'Dies non'. Applicant submitted a reply to this show cause before the 3rd respondent as per letter dated 17.4.2000 [Annexure A-7]. Not satisfied with his explanation, the 3rd respondent passed an order treating the unauthorized absence from duty from 1.12.99 to 31.1.2000 as 'Dies non' as per order dated 27.6.2000 [Annexure A-8]. Applicant thereafter submitted an appeal before the 2nd respondent with a request for leave and to regularize the above period of absence as per representation dated 24.8.2000 [Annexure A-9]. However, the 2nd respondent rejected this representation and passed an order dated 12.10.2000 [Annexure A-10] stating that 'there are no cogent reasons to review the earlier decision'. In the circumstance, the applicant approached the 1st respondent to set aside the orders of 2nd respondent dated 27.6.2000 [Annexure A-8] and 12.10.2000 [Annexure A-10] and to regularize his period of absence from 1.12.99 to 31.1.2000 as per



representation dated 10.1.2001 [Annexure A-11] which has not been disposed of so far. Aggrieved by this, the applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 seeking the following reliefs:

- "i) to call for the records leading to Annexures A-8 and A-10 and quash the same;
- ii) to declare that the Applicant is entitled to earned leave as applied by him and that his absence from duty from 1.12.99 to 31.1.2000 is not unauthorized;
- iii) to direct the Respondents 2 and 3 to regularize the absence of the Applicant from service from 1.12.99 to 31.1.2000 as eligible leave and grant him all benefits;
- iv) to issue an interim direction directing the 1st Respondent to consider Ann. A11 and pass Orders taking into account the fact that the request for leave was not refused for any exigencies of service;
- v) award costs of and incidental to this application;
- vi) pass such other orders or directions as may be deemed just, fit and necessary in the facts and circumstances of the case".

2. Respondents 1 & 2 have filed a reply statement resisting the claim and denied all the allegations raised in the O.A. and further stated that Dr K.P. Hamzakoya on his transfer from Air Port, Tiruchirappalli, was posted as Medical Officer, Community Health Centre, Amini with effect from 5.11.98. On 7.11.98 he applied for 20 days leave as per application dated 7.11.98 to bring his family to Amini. The leave applied for was granted as per order dated 11.11.98 and he entered on leave on 21.11.98. Instead of returning to Headquarters after expiry of sanctioned leave, he requested for extension of leave for 30 days. In reply to his leave application, the department directed him to return to Amini but he did not return. Meanwhile, the extension of leave was granted and intimated and he was directed to report at Amini on expiry of leave but instead of returning back to Amini, he



again requested for extension of leave for 50 days from 10.1.99 to 28.2.99. This extension was also granted on 22.1.99. While on leave, Dr.Hamzakoya was directed to join at Kalpeni and relieve Dr.M.P.Mohammed Koya who was selected for deputation to 'Haj 99'. Accordingly, he joined at the Primary Health Centre, Kalpeni with TA/DA upto 3.5.99. While on duty, he represented to the Administrator to allow him to continue on duty at Kalpeni (his native island) but he was allowed to continue at Kalpeni without TA/DA with effect from 3.5.99 i.e. the date of joining of Dr.M.P.Mohammed Koya from Haj duty. He continued at Kalpeni Primary Health Centre upto 31.8.99 and relieved on the same date. Hence, on his transfer to Lakshadweep from Air Port Tiruchirappalli, after joining at the Headquarters at the Community Health Centre, Amini, he had worked there only for 16 days, i.e. from 5.11.98 to 20.11.98. He was at Kalpeni (his native island) for most of the time. He was allotted one Type IV Quarters at Amini on 15.9.99. The applicant and his nephew Dr. K.P Mohammed Sadique, Dental Surgeon was staying in that Quarter. A residential telephone was also sanctioned to him by the Administrator as per order dated 18.8.99. Therefore, his allegation that he has not been allotted residential Quarter at Amini is false and denied.

3. The applicant had not applied for casual leave to the competent authority and hence no leave was sanctioned to him. The Administrator is the authority competent to sanction any kind of leave to all doctors posted in Lakshadweep. Instead, he sent a telegram/message on 27.11.99 proposing to proceed on eight days casual leave with holidays and restricted holidays as per Annexure A-1. There is no mention about substitute arrangement. No casual leave was sanctioned to him by the competent authority. His contention that he also phoned and appraised the position to the Director of Medical and Health



Services is denied. He had never contacted the Director of Medical and Health Services and proposed him about the urgency before his departure from Amini. He left Headquarters on 1.12.99 without sanction of the competent authority. However, this was informed by the Senior Physician and Medical Officer In-charge of Community Health Centre, Amini as per message dated 1.12.99 [Annexure R-2(a)]. Dr.Hamzakoya's presence was required at Amini as casual leave and paternity leave was sanctioned to Dr.M.P.Basheer, Senior Medical Officer and casual leave was also sanctioned to Dr.Muthubi. No leave application was received from the applicant by the department. Accordingly, the Administrator as per Memorandum dated 4.12.99 [Annexure R-2(b)] directing the applicant to return to Amini immediately. He was also directed to submit his explanation as to why he left Amini without permission and without sanction of leave. It is said that this Memorandum was handed over to him by the Office Peon on 4.12.99 itself at his sister's residence at Kavaratti. But instead of returning to Amini as directed, he proceeded to Kalpeni disobeying the Administrator's orders. Then again he was directed to return to Amini in public interest as per message dated 6.12.99 [Annexure R-2(c)]. While so, the applicant sent a leave application dated 6.12.99 [Annexure R-2(d)] along with a representation dated 8.12.99 [Annexure R-2(e)]. Since he proceeded to Kalpeni against the directions of the competent authority, his representation and leave application were rejected. Due to shortage of doctors at Amini, Dr.P.Pookunhikoya, Chief Medical Officer was at Amini on leave was requested to join at Amini to solve the problem of shortage of doctors. The request of the applicant to join at Kalpeni has not been accepted as two doctors are already there. Again a message dated 13.1.2000 [Annexure R-2(f)] was sent to the applicant through the Medical Officer, Primary Health Centre, Kalpeni. In the reply of the applicant at Annexure



A-4, he has put forward some demands which cannot be accepted by any Head of Department. He rejoined duty on 1.2.2000 after 60 days though leave was not granted to him by the competent authority. He submitted a reply on 13.3.2000 [Annexure R-2(g)] in reply to the O.M dated 28.2.2000 (Annexure A5) and mentioned many unwarranted matters. He admitted that he has not applied his mind for casual leave in writing for 8 days with permission to avail intervening holidays and restricted holiday or took permission to leave the Headquarters. This is a serious lapse of the part of the applicant and he thereafter submitted leave application for 60 days from 1.12.99 from Kalpeni on 6.12.99 and the reason stated is 'domestic'. It should have been forwarded by the Medical Officer In-charge of the Community Health Centre, Amini and violated the normal rules. He had requested regularization of the entire period of absence from 1.12.99 to 31.1.2000 as earned leave for 62 days as per application dated 4.2.2000 [Annexure R-2(h)]. He should have obtained sanction of leave or prior permission to leave the Headquarters. While working under the Administration earlier also left the Headquarters without sanctioning of leave or permission to leave the Headquarters as per O.M. dated 10.2.93 [Annexure R-2(i)] by which he was warned for identical misconduct. The Administrator has passed dies-non orders as per Annexure A-8. The full reasons for treating as dies-non has been mentioned in the order and said there is no cogent reason to review the earlier decision as per order dated 12.10.2000 [Annexure A-10] which was communicated to him. It is said that the applicant was ill-advised as to the scope of Rule 17 of CCS (Leave) Rules and he was directed to rejoin at Amini on exigencies of public service as there was shortage of doctors and the Medical Officer In-charge of Amini requested the services of another doctors as the applicant left the station without getting sanction of leave. The casual leave of



the applicant has not been received by the authority so far. The applicant has not mentioned any reason put forth for his immediate presence at Kalpeni in his leave application dated 6.12.99 [Annexure R-2(j)].

4. The applicant has filed a rejoinder reiterating almost the same contention made in the Original Application.

5. The challenge is mainly to quash Annexure A8 and Annexure A-10, aggrieved by the decision of the authorities in treating the period of absence from 1-12-1999 to 31-1-2000 as 'dies-non'. The proposed action is based on the Government of India decision 6 below Rule 11 of CCS (CCA) Rules, 1964, which is reproduced below:-

"When a day can be marked dies non and its effect:
Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that days on which work is not performed be treated as dies non, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices."

6. It is very clear that the authorities have considered the absence from work of the applicant neither to count as service nor be construed as break in service. Therefore, it will not affect his other service conditions. Hence, the argument of the applicant's counsel that 'dies non' is a punishment and will have far reaching consequences in the service will not hold good.

7. It is pertinent to note that the applicant has admittedly absented from duties for his personal exigencies. Whether he should report for duties on public interest is a



matter to be decided by the respondents. The applicant cannot assess the emergency of the work and the public interest on his own. Since the leave is not a matter of right, the applicant cannot demand for the same. The innocuous action of 'dies non' it is reiterated, was a doctrine of the respondents in the case of the applicant only because he has reported for duty after two months and it was a concession granted to the applicant, though the respondents could have taken harsh measures for such an act of misconduct.

8. Respondents also submitted that this is a question of keeping the discipline in the Institution and the applicant being in the Health Services, the poor patients to whom he is supposed to attend had to suffer a lot because of the indifferent attitude on the part of the applicant and any interference by a judicial forum will demoralize the Institution's discipline and therefore will not be justified.

9. We have given due consideration to the arguments advanced by both sides in elaborate and it is known that in Courts/Tribunals power of judicial review will not be justified in such cases unless there is malafides, victimization or discrimination or no evidence. In this case, the absence of the applicant is an admitted fact by both the parties and no such plea of exemption has been taken by the applicant in the OA. There is no legal ground put forward by the applicant for interference of the said matter. It has been held by the Apex Court in Tata Cellular vs. Union of India [(1994) 6 SCC 651] that the scope of judicial review is limited to the decision making process and not the merit of the decision itself as the Court does not sit as an appellate court while exercising the power of judicial review. In this case, we do not find any arbitrariness, unfairness, illegality or violation of natural



justice as envisaged in Articles 14 and 16 of the Constitution and therefore, the application does not merit and only to be dismissed.

10. In the conspectus of facts and circumstances of the case, we are of the opinion that there is no reason to quash Annexure A8 and Annexure A-10 and we dismiss this Original Application without any order as to costs.

Wednesday, this the 24th day of April, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

APPENDIX

- A-1 True copy of the Telegram dt.27.11.99 sent by the Applicant to the Director of Medical & Health Services, Kavaratti Island.
- A-2 True copy of the communication No.33/21/99-DMHS dt. 20.12.99 from the 3rd respondent to the applicant and three other doctors.
- A-3 True copy of the communication dt. 7.12.99 from the applicant to the 3rd respondent.
- A-4 True copy of the communication dt. 13.1.2000 from the applicant to the 3rd respondent.
- A-5 True copy of the OM No.33/10/98-DMHS dt. 28.2.2000 from the 3rd respondent to the applicant.
- A-6 True copy of the show cause notice No.33/10/98-DMHS dated 1.4.2000 from the 3rd respondent to the applicant.
- A-7 True copy of the reply to show cause notice dated 17.4.2000 submitted by the applicant before the 3rd respondent.
- A-8 True copy of the order No.33/10/98-DMHS dt. 27.6.2000 issued by the 3rd respondent.
- A-9 True copy of the petition dt. 24.8.2000 submitted by the applicant before the 2nd respondent.



A-10 True copy of the order No.33/10/98-DMHS dated 12.10.2000 issued by the 3rd respondent.

A-11 True copy of the representation dt. 10.1.2001 from the applicant to the 1st respondent.

A-12 True copy of the allotment order No.1/LAB/ADMINI/99-2000 issued by the Member Secretary, Local Accommodation Board, Amini.

A-13 True copy of the office order No.32/14/93-DMHS dt. 7.1.2000 issued by the 3rd respondent.

A-14 True copy of the communication dt. 19.2.2001 from the 1st respondent to the 3rd respondent.

Respondents' annexure

R-2(a) True copy of the Message No.2/6/98-CHCA dt. 1.12.99 signed by the Medical Officer in-charge.

R-2(b) True copy of the letter No.33/10/98-DMHS/10334 dt. 4.12.99 issued by the 3rd respondent.

R-2(c) True copy of the Message No.33/10/98-DMHS dt. 6.12.99 signed by the 3rd respondent.

R-2(d) True copy of the leave application dt. 6.12.99 submitted by the applicant to the 3rd respondent.

R-2(e) True copy of the reply letter dt. 8.12.99 submitted by the applicant to the 3rd respondent.

R-2(f) True copy of the Message No.33/10/98-DMHS dt.13.1.2000 issued by the 3rd respondent.

R-2(g) True copy of the reply letter dt. 13.3.2000 submitted by the applicant to the 3rd respondent.

R-2(h) True copy of the application dt. 4.2.2000 submitted by the applicant to the 3rd respondent.

R-2(i) True copy of the OM No.32/5/90-HMHS (2) 700 dt. 10.2.93 issued by the 3rd respondent.

R-2(j) True copy of the leave application dt. 6.12.99 submitted by the applicant.