

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA NO. 165/2004

FRIDAY THIS THE 3rd DAY OF NOVEMBER, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

- 1 K.P. Kadeeja W/o Late Dr. N.Muthukoya
Puthiyannal House, Androth
Lakshadweep.
- 2 K.P Tahira D/o late ^{Dr.} N. Muthukoya
Puthiyannal House, Androth
Lakshadweep.
- 3 K.P. Shahida D/o late ^{Dr.} N. Muthukoya
Puthiyannal House, Androth
Lakshadweep.
- 4 K.P. Faritha D/o late ^{Dr.} N. Muthukoya
Puthiyannal House, Androth
Lakshadweep.
- 5 K.P. Ubaidulla S/o late ^{Dr.} N. Muthukoya
Puthiyannal House, Androth
Lakshadweep.
- 6 K.P. Fazeela D/o late ^{Dr.} N. Muthukoya
Puthiyannal House, Androth
Lakshadweep.

By M/s P. Gopinatha Menon & R. Sreeraj

Vs.

- 1 Union of India represented by its Secretary
to the Government of India
Ministry of Health & Family Welfare
Department of Health,
Nirman Bhavan, New Delhi.

2 The Administrator,
U.T. Of Lakshadweep
Kavarathi

3 The Director of Medical & Health Services
Directorate of Medical & Health Services
U.T. Of Lakshadweep
Kavarathi.

Respondents

By Advocate Mr.T.P.M. Ibrahim Khan, SCGSC for R-1
By Advocate Mr. P.R. Ramachandra Menon for R 2 & 3

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application was filed by Dr. N. Muthukoya, Chief Medical Officer, CHS, Androth Island, U.T. of Lakshadweep being aggrieved by Annexure A1 order dated 31.12.2003 treating the period of his absence from duty from 5/3/87 to 8/10/01 as dies-non.

2 During the pendency of the Application, the applicant retired from service and expired and the legal heirs were substituted as applicants 1 to 6 in the O.A.

3 The background facts leading to the issue of the impugned order had been explained by the original applicant (late Dr. N. Muthukoya) as follows:- While working as a Senior Medical Officer, Beedi Workers Welfare Fund Dispensary, Kondotty, Kerala, he fell ill and sought medical leave. He was sanctioned leave on medical grounds from 5/12/86 to 4/3/87 on 9/1/87 and after availing of that leave, he had a balance of 116 days of half pay leave to his credit. He was promoted as Chief Medical Officer by an order dated 12/5/88. He joined duty at Delhi only on 9/10/2001, was accommodated at Lakshadweep in the capacity of Chief Medical

Officer, Lakshadweep. After resuming duty at Delhi he requested for regularisation of the period of absence. By letter dated 8/12/01 he was asked to show cause why the period of absence should not be treated as dies-non. The original applicant gave a detailed reply which was however rejected by the respondents and Annexure A1 order was issued conveying the decision of the competent authority to treat the period of absence as dies-non for all service matters, i.e. for the purpose of salary, allowances, leave, increments promotion and pensionary benefits. He then submitted a review petition to the 1st respondent and when it was not considered he filed OA143/2003 and the said Application was disposed of with a direction to the 1st respondent to consider the representation sympathetically. Thereafter the 1st respondent rejected the request of the original applicant by the Annexure A-7 order.

4 A reply statement has been filed by the respondents 2 & 3 viz. the Lakshadweep Administration. On behalf of the Govt of India (R-1) it was stated that they would be adopting the reply of R 2 & 3 and accordingly the case was heard and reserved for orders. Thereafter R-3 filed a reply statement with an MA for accepting the same which was dismissed as the case was already reserved for orders.

5 It has been submitted in the reply statement that the original applicant was under orders of transfer to Alathur when his leave was sanctioned and he applied for extension of leave for 90 days beyond 4.3.1987 and when the Labour Commissioner asked him to produce the medical certificate, he remained absent unauthorisedly.

In the meantime, the original applicant was promoted as CMO as per order dated 12.5.88 and was posted at CLTRI, Chengalpettu where also he never joined and requested for transfer to his native place which could not be done due to non-availability of vacancy. He continued to remain absent without submission of medical certificates from Authorised Medical Attendant. He had also in between submitted a conditional resignation. Technical opinion was taken on the authenticity of issuance of certificates by a General Duty Medical Officer for long periods of 12-13 years for a disease confirmed by the Orthopedician as 'sciatica'. The Principal Medical Officer of the District was competent as AMA to issue Medical certificate in this case whereas the original applicant got certificates from the PHC Doctor who was not competent to do so.

6 No rejoinder has been filed.

7 We heard the counsel on both sides. It was argued by the Learned counsel for the applicants that the absence of the original applicant cannot be considered as willful as no disciplinary action had been taken against him and that the original applicant had been furnishing the medical certificates all along and at no stage the case of the original applicant was referred to a Medical Board. It was also urged that there are no limits laid down under Rule 32 of the CCS (Leave) Rules for the grant of Extraordinary leave and that willful absence should have been proved for taking action under FR-17A.

8 The main ground taken by the original applicant is that the medical certificates produced by him were not relied upon, in which

case , he should have been referred for a second medical opinion as per Rule 19(3) of the Leave Rules before a Civil Surgeon and the meeting of Specialists comprising of an Orthopaedic Doctor called by the respondent to evaluate the certificates was a serious impropriety and that no notice was given to the applicant for such a meeting.

9 The factual circumstances of the original applicant's absence assume significance in examining this contention of the applicant. The original applicant was under orders of transfer when his medical leave was sanctioned in the first instance. He was said to be suffering from 'sciatica" and advised bed rest . While this can be true for a reasonable time, it cannot account for his absence for a period of 14 years from 1987 to 2001, for which the original applicant has submitted that he was under Ayurvedic and local treatment and there is no Orthopaedic Doctor at Lakshadweep. The respondents have stated that the original applicant never submitted Medical certificates in time and always produced them after the expiry of leave, for eg. he produced Medical certificate on 23.6.1990 for the period from 5/3/87 to 1/11/87 and therefore he could not be referred to the Medical Board at that time. It is a fact that the Respondents have shown undue laxity in dealing with the applicant. Not only that, he was not referred to the Medical Board during these 14 years, he was allowed to join duty at Lakshadweep without a demur after the unauthorised absence, moreover no disciplinary action was taken or even contemplated. However these omissions of the respondents cannot by any account justify the commissions of the original applicant who

stayed at his native place on pretext of false illness and went on seeking leave by getting Medical certificates from Doctors who were not competent to treat the disease he was reported to be suffering from. Even according to common knowledge, 'sciatica' is not a disease requiring bed rest for 14 years. According to the respondents, the Principal Medical Officer of the District was competent to issue the certificate and the applicant was getting the certificates from the PHC doctors. The applicant himself was a Chief Medical Officer and he cannot feign ignorance of Rules. Being a Doctor in a responsible position who was competent to issue such certificates himself, his conduct was all the more reprehensible. We therefore reject the contention that he could not produce certificates from competent doctors.

10 Regarding the contention that the Expert Committee cannot substitute for the Medical Board, it is to be appreciated that the Committee was constituted for evaluating the representation of the original applicant enclosing the certificates he had given earlier in the light of the directions of this Tribunal in OA 143/2003 by which time the applicant had become fit for duty and had already been allowed to join and the purpose was only to consider the question of regularisation of the period of absence. At that point of time reference to a Medical Board to examine the genuineness of the illness and to determine the fitness of the individual to rejoin duty was not warranted and for the same reason notice to the applicant for his presence was also not required to be given. We reject this argument

of the original applicant. However it has to be accepted that the respondents could have and should have referred the applicant to a Medical Board during the period of his absence, that they did not do so is a serious dereliction of duty.

11 The next contention of the original applicant is that Annexure A1 order is ultravires the provisions of F.R-17-A and 'dies non' can affect a person only on three counts viz, LTC, quasi-permanency, eligibility for appearing in Departmental Examinations. FR-17A provides that a period of unauthorised absence in the case of an individual employee, remaining absent unauthorisedly or deserting the post shall be deemed to cause an interruption or break in service unless otherwise decided for the purposes of LTC, quasi-permanency and eligibility for departmental examinations. The respondents have not invoked this rule in the applicant's case by treating his absence as break in service, which would have meant that his entire past services will be forfeited. Instead, they have treated the period of absence as dies non. The period covered by dies non will not be construed as break in service but the period treated as dies non itself will not count as service for any purpose such as increment, credit of leave, pension etc. in terms of the instructions in CAG,U.O.No.1947-A/438-58,dated 12.9.58.

12 Regarding willful absence not covered by leave., the learned counsel for the applicant argued that in this case the absence of the applicant was not wilful and that the above mentioned instructions dated 12.9.58 have been superseded by FR-17A. The respondents

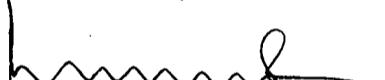
after consideration of the medical certificate produced by the original applicant and not satisfied with the same have come to the conclusion that the absence was wilful. The history of the case also supports this conclusion as it is seen that the original applicant was transferred/promoted to various places like Alathur, Bangalore, Chengalpet during these 14 years and he did not join at any of these places, was waiting for a posting to Lakshadweep which could not be given to him as there was no vacancy and finally when he was posted to Lakshadweep in 2001, joined the post immediately. The respondents have of course indirectly acquiesced in the indisciplined behaviour of the original applicant and though they have averred that they had issued some memos to him, the file is reportedly missing. Be that as it may, the failure of the respondents cannot be taken advantage by the applicant to argue that his absence for 14 years was not wilful. There is no indication to the effect that the instructions dated 12.9.58 regarding dies non have been repealed. This contention is therefore rejected.

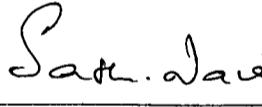
13 The original applicant has prayed for regularising the period of absence as eligible leave on the basis of medical certificates produced by him. The genuineness of the medical certificates has already been disputed. Admittedly, the original applicant had only 116 days of half pay leave to his credit at the time his leave was sanctioned up to 4/3/87. There are limits up to which various leaves can be granted and Rule 12 of the CCS(Leave) Rules provides that "unless the President, in view of the exceptional circumstances of

the case otherwise determines, no government servant shall be granted leave of any kind for a continuous period exceeding five years". In any case, the question here is not about the availability/eligibility of leave, but whether the original applicant in the circumstances of the case is entitled to such a favoured treatment, when the medical certificates produced by him have not been found to be acceptable and when he was also not subjected to any disciplinary action. The answer is "No" and hence we do not consider that any interference with the impugned order of the respondents is necessary.

14 OA is dismissed. No costs.

Dated 3.11.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

kmn