

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO. 280/93

Tuesday, this the 1st day of February, 1994

SHRI N. DHARMADAN, MEMBER (J)  
SHRI S.KASIPANDIAN, MEMBER(A)

K.J. Devassy, Chowkidar,  
Regional Filaria Training &  
Research Centre, Calicut.

.. Applicant

By Advocate Shri T.G.Rajendran.

V/s

1. Assistant Director,  
Regional Filaria Training &  
Research Centre, Calicut.

2. Administrative Officer,  
National Institute of  
Communicable Diseases,  
22 Sham Nath Marg, Delhi.

3. The Director,  
National Institute of Communicable  
Diseases, 22 Sham Nath Marg, Delhi.

4. Union of India rep. by  
the Secretary, Ministry of  
Health, New Delhi.

.. Respondents

By Advocate Shri Bahuleyan for  
Advocate Shri T.P.M.Ibrahim Khan, ACGSC.

ORDER

N. DHARMADAN

Applicant is a Chowkidar. He is aggrieved by  
Annexure-VII memorandum passed by the Assistant Director  
which reads as follows:-

" Reference to your representation dated 11.3.92. Since you have wilfully absented from your duties from 17.12.91 to 31.12.91 the period is treated as unauthorised absence and no salary is payable to you for the period. The salary for the period for which you have worked i.e. from 1.12.91 to 16.12.91 was claimed and kept in the office till 7.2.92. Since you have not accepted the salary inspite of verbal and written instructions the same has been deposited back. The matter has been referred to the Director, NICD, Delhi for further action.

In future if any representation is submitted without mentioning your designation, the same will not be entertained."

2. According to applicant, he applied for leave from 17.12.91 to 31.12.91 due to illness. Leave application was submitted by him on 11.12.91. He joined duty on 1.1.92. Then he could understand that leave was not sanctioned and salary for the period from 17.12.91 to 31.12.91 was withheld. He filed Annexure-II representation to the 3rd respondent for releasing the salary. He has also raised some complaint against first respondent. The impugned memorandum was issued under the above circumstances before the disposal of Annexure-II treating the period from 17.12.91 to 31.12.91 as unauthorised absence. The applicant was also denied salary for the aforesaid period. According to the applicant the above memorandum is penal in nature.

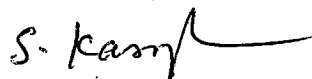
3. Learned counsel for respondents submitted that the application for leave referred to in the O.A. was rejected by Annexure-R1(T) order dated 19.12.91; This was not served on the applicant since he did not receive the same. When specific query was asked to the learned counsel as to why an enquiry under the CCS (CCA) Rules was not conducted before issuing the above memo, he has no answer. However, the learned counsel admitted that the respondents have not conducted any enquiry under the CCS (CCA) Rules.

4. Since the respondents have not conducted an enquiry before coming to the conclusion that the applicant has unauthorisedly absented from office, the decision to withhold the salary for the period covered by the leave application treating his absence as unauthorised amounts to a penalty. In this view of the matter, Annexure-VII is unsustainable. It is illegal and violative of principles of natural justice.

5. If the applicant refused to work as per the orders of the respondents or goes on leave without getting prior sanction from the competent authority and absents himself<sup>him</sup> unauthorisedly, the respondents can proceed against<sup>him</sup> following the procedure provided under the CCS (CCA) Rules. The respondents have the full liberty to penalise him in accordance with law if he is found guilty of any misconduct. Such a procedure has not been adopted by the first respondent. As indicated above, the unilateral decision taken by the respondents that the applicant has unauthorisedly absented from duty from 17.12.91 to 31.12.91 and thereby he is not entitled to the salary for the period is illegal and cannot be sustained.

6. Accordingly, having regard to the facts and circumstances of the case, we set aside Annexure-VII and allow the application. However, it is made clear that this decision will not stand in the way of the respondents in taking appropriate legal action for his alleged absence during the period covered by the leave application, if it is really a misconduct on his part. It goes without saying that Amn.II deserves consideration and disposal in accordance with law.

7. The application is allowed as indicated above. There will be no order as to costs.



( S.KASIPANDIAN )  
MEMBER(A)

 1. 2. 94.

( ' N.DHARMADAN ' )  
MEMBER(J)

v/-