

Central Administrative Tribunal
Ernakulam Bench

...

Date of decision: 19.02.1990.

Present

Hon'ble Shri NV Krishnan, Administrative Member

And

Hon'ble Shri N. Dharmadan, Judicial Member

DA 29/89

C.V. Varghese

: Applicant

Vs

1. Union of India, rep. by the Secretary, Ministry of Communications, New Delhi.
2. The Post Master General, Kerala, Circle, Trivandrum.
3. The Assistant Post Master General (S), Kerala Circle, Trivandrum. : Respondents
4. The Superintendent of Post Offices, Mavelikkara Division, Mavelikkara.
5. The Post Master, Head Post Office, Mavelikkara.

M/s MK Damodaran & CT Ravikumar : Counsel for applicant

Mr. P. Santhalingam, ACGSC : Counsel for respondents

O R D E R

(Shri NV Krishnan, Administrative Member)

The applicant, an Upper Division Clerk in the

Savings Bank Control Organisation, is aggrieved by the

impugned order dated 30th August, 88 (Annexure-V) of

the Assistant Post Master General (S), Kerala Circle,

Trivandrum (Respondent-3) treating the period of

unauthorised absence from 8.4.85 to 17.4.88 as 'dies-non'.

V

He has prayed to quash this order and to direct the respondents to consider him as being on duty for the period and to give him all consequential benefits.

2. The facts leading to the issue of the impugned order can briefly be stated.

2.1 The applicant was transferred by the order dated 23.3.85 (Annexure-I) from Mavelikkara to be "Upper Division Clerk to Savings Bank Control Organisation, Tellicherry, terminating the local arrangements". He filed a Writ Petition OP 3260/85 challenging the order of transfer in the High Court of Kerala. By the Annexure-II order dated 8.4.85, the High Court of Kerala passed an interim order staying the operation of the order of transfer. The original petition filed in the High Court of Kerala was received on transfer in this Tribunal after its constitution. This was numbered as TA 131/87. By the final order dated 27.1.88, this petition was dismissed with the observation that the applicant could seek re-transfer to Mavelikkara by filing a proper representation.

2.2 The applicant, therefore, contends that until his

petition was disposed as above by this Tribunal, he was not on duty on the ground that the operation of the order had been stayed by the High Court of Kerala and, therefore, his absence is authorised. He also assails the Annexure-V impugned order on the ground that Respondent-3 had violated the principle of natural justice by passing such an order. He contends that the treatment of the unauthorised period of absence as 'dies non' is a punishment and, therefore, the decision taken in Annexure-V, without complying with the provisions contained in the Central Civil Service (Classification, Control and Appeal) Rules, 1965, is a blatant violation of the principle of natural justice and is invalid ab-initio.

3.1 The respondents have vehemently contested this application, particularly the applicant's averment that he was absent from duty by virtue of the interim order of the High Court of Kerala. It is stated that, as a matter of fact, the applicant had been relieved from Mavelikkara on 30.3.85 itself and he was also granted earned leave on medical certificate for 7 days from 1.4.85 to 7.4.85, with permission to pre-fix the Sunday on 31.3.85. The applicant was expected to join duty at

Tellicherry on the expiry of leave granted to him.

3.2 A Writ Petition was filed in the High Court of Kerala only on 8.4.85, ie, after he was relieved and, therefore, the interim order of stay passed by the High Court of Kerala was inoperative. The respondents also contend that in its judgment dated 27.1.88 in TA 131/87, the Tribunal had also observed that the applicant had obtained the interim order of stay by suppressing the material facts that he had been relieved on 30th March, 85 and it was also held that the order was of no effect as the applicant had already been relieved of the post as earlier as 30th March, 85.

3.3 Consequent upon the Tribunal's order dismissing the Writ Petition filed by the applicant, it is stated that, a notice was issued on 27th July, 88 (Annexure-III) to show cause why the period of unauthorised absence should not be treated as 'dies non'. After considering the reply ^{Q 14} of the applicant (Annexure-IV) which was found to be unsatisfactory, the impugned Annexure-V order was passed.

3.4 The respondents contend that there has been no violation of the principles of natural justice and that

the applicant was knowingly and wilfully absent from duty.

He was given an opportunity to show cause against the proposed action. As he did not satisfy the Respondent-3 about the genuineness of the reasons advanced by him for his absence, the impugned order was passed.

4. It is clear from the narration of the facts mentioned above that the applicant was knowingly and wilfully absent from duty from 8.4.85 after obtaining the interim order of stay of the High Court of Kerala (Annexure-II order of 8.4.85). It is sufficient for our purpose to note that this Tribunal had earlier observed that the order of stay was obtained by suppressing relevant facts.

5. The only other question that remains is whether 'dies non' is a punishment and if it can be imposed without complying with the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965.

6. The expression 'dies non' is not defined in any rules. It is the abbreviated form of the Latin expression 'dies non juridicus' meaning non-judicial day. As a legal expression it means, according to the Concise Oxford Dictionary, a day

on which no legal business is done and a day that does not count or cannot be used. Therefore, dies non not only implies loss of pay for the period of unauthorised absence but also a fictitious assumption that this period did not exist at all in the service of the official so that it does not count as service for any purpose, whether for increments or for pension, etc.

7. The learned counsel for the applicant seeks support for his view from the instructions issued by the Director General, Posts & Telegraphs, on 5.10.75, re-produced as Govt. of India's instruction No.5 under Rule 11 of the Central Civil Service (Classification, Control and Appeal) Rules (Swamy's Compilation 16th Edition), para (iii) of which is reproduced below:-

"(iii) If a Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences, viz, that the entire period of absence would be treated as unauthorised entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If, however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorised resulting in loss in pay and allowances for the period of absence under proviso to FR 17 (1) and thus a break in service. The question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard."

8. We have perused carefully that instruction. That instruction would apply only when a decision has been to be taken that the unauthorised absence from duty will not only result in loss of pay for the period under the proviso to sub rule-1 of Fundamental Rule 17 but also result in break in service. Dies non stands in different category. The period treated as dies non will neither count as service nor be construed as a break in service. This is clear from the Govt. of India Instruction No. 6 under Rule 11 ibid (based on Rule 62 of P&T Manual Vol.III) and it is reproduced below:-

"(6) 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 the days on which work is not performed be treated as dies non, ie, 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."

9. The impugned order at Annexure-V does not state specifically that the unauthorised absence will also be treated as break in service in which case only all service rendered prior to 8.4.85 would stand forfeited for all purposes. Therefore, there is no question of the need for resorting to the provisions of the CCA Rules before passing an order

treating a period of unauthorised absence merely as
dies non.

10. We are of the view that on the basis of the averments made in the pleadings, the applicant can have no cause of complaint that he has been denied natural justice. It is stated in the reply affidavit that, long before the Writ Petition filed by him was dismissed on 27.1.88 by the Tribunal, he was directed to join duty at Tellicherry Head Post Office by serving a notice on him dated 26.11.86, in which he was also informed that non compliance would result in disciplinary proceedings for unauthorised absence. Further, even before the impugned order was passed, a show cause notice was given to him by the Annexure-III letter dated 27th July, 88. Therefore, the plea that the order of dies non has been passed without giving him a notice is incorrect and the alleged denial of natural justice has no foundation.

11. For the reasons mentioned above, we are of the view that the applicant has rightly been treated as being unauthorisedly absent from duty from 8.4.85 to

11

17.4.88 and that the decision to treat the unauthorised period of absence as dies non cannot be assailed.

12. We notice that the unauthorised period of absence ^{actually} followed a period of earned leave from 1.4.85 to 7.4.85. That being the case, the applicant would ordinarily be entitled to get the protection of Rule 27(1)(b) of the Central Civil Service (Pension) Rules, if the 1972 which is to the effect that unauthorised absence is in continuation of authorised leave, the absence will not be treated as an interruption in the service of a government servant entailing forfeiture of his past service, as long as the post of the absentee is not filled substantively. However, in order to allay the fears of the applicant, as also to make the position ^h absolutely clear, it is declared that unauthorised period of absence of the applicant which has been treated as dies non by the impugned order dated 30th August, 88 (Annexure 4) will not be treated as interruption in the service of the employee and, therefore, will not entail any forfeiture of the service rendered by him prior to 8.4.85.

: 10 :

13. The application is dismissed with the
aforesaid observations and there will be no~~h~~ order
as to costs.

 
(N. Dharmadan) 19.2.90 (N.V. Krishnan)
Judicial Member Administrative Member

19th day of February, 1990.