

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 314 OF 2009**

*Tuesday*....., this the 12<sup>th</sup> day of January, 2010.

**CORAM:**

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER  
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

N. Syed Mohammed Koya,  
Stenographer Gr.II, Directorate of  
Medical and Health Services,  
Union Territory of Lakshadweep,  
Kavaratty, residing at Nedumthiroor,  
Kiltan Island, Lakshadweep.

... **Applicant**

(By Advocate Mr. V. Varghese)

**versus**

1. The Administrator,  
Union Territory of Lakshadweep,  
Kavaratty.
2. The Secretary,  
(General Administration and Services),  
Union Territory of Lakshadweep,  
Kavaratty – 682 555.
3. Director of Medical and Health Services,  
Union Territory of Lakshadweep,  
Kavaratty – 682 559.
4. The Director (Services),  
Secretariat, Union Territory of  
Lakshadweep, Kavaratty. ... **Respondents**

(By Advocate Mr. S. Radhakrishnan)

The application having been heard on 06.01.2010, the Tribunal  
on .....12.1.2010..... delivered the following:

*[Signature]*

**ORDER****HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

When the case was called for hearing, none represented the applicant, while the respondents were represented by their counsel. Invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987, the case was heard when the respondents' counsel defended the impugned order vide Annexure A-2.

2. Brief facts of the case are as hereinafter. The applicant had applied for a day's casual leave on 04-07-2007 as he was "having some immediate problems". This was duly sanctioned, vide endorsement on the said leave application at Annexure A-1. On 5<sup>th</sup> July, 2007 the respondents issued one order vide Annexure A-2 stating that "In response to the call of the Lakshadweep Government Employees Union Protest Casual Leave the following staff officials under various Department were in Protest casual Leave or remained absent without valid reasons or prior permission on 4<sup>th</sup> Day of July 2007 from the Departmental Heads." The list contained the name of the applicant also. The order further stated that the 4<sup>th</sup> day of July 2007 on which Protest Casual Leave was taken by the officials be treated as 'dies non' ie., the day will neither count as service nor be construed as break in service.

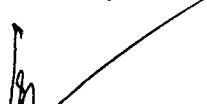
3. The applicant has moved Annexure A-3 appeal to which there has been no response. Hence this application praying for quashing of Annexure A-2 order, for a direction to the respondents to grant casual leave to the applicant for 04-07-2007 and to grant consequential benefit.



4. Respondents have contested the O.A. Their stand is that notwithstanding the fact that the applicant had got the leave sanctioned from his Director on the ground of immediate problem, he happens to be the President of the Union which had called for the Mass Protest Casual leave and as such, as in other cases, his absence was treated as dies non. They have added to the counter (a) copy of the service Association letter dated 04-07-2007 calling for protest casual leave; (b) office order dated 01-08-2007 addressed to all the Departmental Heads for recording necessary entries in the service book of the fact of treating the absence on 04-07-2007 as dies non; (c) communication dated 01-08-2007 from the Lakshadweep Government Employees Union requesting the authorities to withdraw the order dated 05-07-2007 (signed by the applicant in his capacity as the President); (d) letters from various Directors as to the availing of casual leave, spelling out the reason as protest casual leave or for union activities.

5. Counsel for the respondents submitted that uniformly all those who were absent on 4<sup>th</sup> July 2007 had been marked absent and their absence was treated as dies non. Only in respect of two of the individuals who belong to some other Union (Parishad) the order treating their absence on the said day as dies non was kept in abeyance. The applicant being the President of the Union, cannot be believed to have taken leave for any other purpose than to participate in the Protest Casual leave. Hence, the OA is liable to be dismissed.

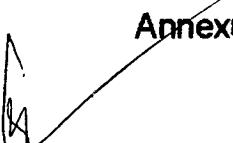
6. Argument advanced by the counsel for the respondents has been heard and documents perused. Admittedly, on 4<sup>th</sup> July 2007 the applicant preferred an application for casual leave as he was "having immediate

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problems" and the leave had been duly sanctioned by his Director. It was, without even issue of a show cause notice, that the respondents have issued the impugned Annexure A-2 order. Dies non entails, minimum, loss of pay for that day and unless otherwise specified by the competent authority, it would also lead to break in service. In the instant case, the authority has held that the absence would not constitute break in service, nor would it be counted as service. Loss of pay would mean civil consequence. Under such circumstances, the applicant is right when he states that no show cause notice had been issued.

7. That apart, the facts of the case show that the applicant was duly sanctioned leave on 04-07-2007 by the competent authority. Reason given was "immediate problems". Once the leave has been sanctioned, and the reason for leave being other than "Protest Casual Leave", the mischief aimed at by the provisions of Rule 7(2) of the C.C.S(Conduct) Rules, 1964 does not exist. It would be curious to note that in many other cases, the purpose of leave was to participate in the mass Casual leave or in union activities. The case of the applicant not falling within the above category and he having already been granted casual leave by the competent authority on 4<sup>th</sup> July, 2007 itself, respondents cannot presume that the applicant has taken leave purely to participate in the protest leave, notwithstanding the fact that he happens to be the President of the Union. The leave sanctioned had not been rescinded. As such, in so far as the applicant is concerned, Annexure A-2 order has to be quashed and set aside.

8. In view of the above the O.A. fully succeeds. It is declared that Annexure A-2 order dated 05-07-2007 is illegal and arbitrary, in so far as



**includes the name of the applicant. Respondents are directed to regularize the absence of the applicant on 4<sup>th</sup> July 2007 as casual leave, if not already done and reverse any entry made otherwise in the service book.**

**9. Under the above circumstances, there shall be no orders as to cost.**

(Dated, the 12<sup>th</sup> January, 2010.)

  
**K.NOORJEHAN**  
**ADMINISTRATIVE MEMBER**

  
**Dr.K.B.S.RAJAN**  
**JUDICIAL MEMBER**

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