

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 372 OF 2007

Dated the 30th October, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

Ponkidavu Alias Noorul Ameen,
Police Constable No.P.337
Police Station,
Union Territory of Lakshadweep,
Kavaratti.

.. Applicant

[By Advocate: Mr Sathyanadhan for Mr. MV Thamban,)


-Versus-

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Superintendent of Police,
Union Territory of Lakshadweep,
Kavaratti.
3. Sub Inspector of Police,
Police Station, Kavaratti.

...Respondents


[By Advocates: Mr. S. Radhakrishnan)

This application having been heard on 23rd October, 2008 the
Tribunal delivered the following -



ORDER

(Hon'ble Dr. KS Sugathan, AM)



The applicant is working as a Police Constable in Lakshadweep. In 1996 he requested permission to grow beard on medical grounds on account of a skin disease. However by Duty pass dated 7.7.1996 issued by the Sub Inspector of Police, Kavratti the applicant was relieved of his duties on the ground that he is suffering from a contagious disease. By the said Duty pass he was also asked to vacate the quarters occupied by him and advised to come back after curing his illness (A/2). The applicant submitted a representation dated 8.7.1996 stating that as per medical opinion he is only suffering from an allergic problem and he was only advised not to shave and therefore there was no justification to keep him out of duty (A/4). But the said representation was not considered. Subsequently, the Senior Physician of the Government Hospital at Kavaratti issued a certificate dated 18th July 1996 stating that the applicant is suffering from dermatitis cheek & psoriasis and the applicant was advised to consult a dermatologist at Kochi as no specialist in dermatology is available at Kavratti. As per the advise of the Senior Physician of the Kavaratti Hospital the applicant went to Kochi and consulted a private dermatologist Dr. Gopalakrishnan on 14.8.1996. The certificate issued by the Dr. Gopalakrishnan is at A/5. It is stated in the said certificate that the applicant is suffering from "Urticuria" which is only an allergic condition and not a contagious or infectious disorder and therefore, the

applicant was advised not to shave till he is completely cured of the disease. On 13.10.1998 the respondents suspended the applicant (A/6). On 24.8.1999 i.e. nearly a year after the suspension order, the applicant submitted a representation against the suspension and seeking permission to report for duty. In the said representation he has also referred to the medical certificate given by Dr. Gopalakrishnan, the dermatologist at Kochi (A/7). This was followed by another representation dated 18.9.1999 (A/8). Vide order dated 20.9.1999 the respondents revoked the suspension of the applicant and he was allowed to join duty subject to the condition he shall not keep the beard. The applicant then represented by letter dated 22.9.1999 that the Government has permitted police personnel to keep beard in certain fashion and that he may be permitted to join with a trimmed beard. Finally he was allowed to join on 8.2.2000. On 6.1.2003 the applicant was issued a notice why the period of absence between 20.9.1997 to 7.2.2000 should not be treated as dies-non. This was followed by another dated 10.1.2003 in which the respondents regularised the period of absence between 7.7.1996 to 19.8.1996 as earned leave and the period from 20.8.1996 to 19.9.1997 as leave of any kind due. It was also stated in the said order the matter regarding the period between 20.9.1997 to 8.2.2000 will be decided after receiving reply from the applicant. The applicant replied to the notice stating that as he was illegally kept out of duty, the entire period from 7.7.1996 to 7.2.2000 should be treated as duty. After considering the reply



submitted by the applicant the respondents issued the impugned order dated 6.6.2003 by which the period from 20.9.1997 to 7.2.2000 was treated as unauthorized absence and is sanctioned as leave without pay on the basis of dies-non. The applicant has challenged the aforesaid order and sought the following relief:


- (i) to call for the records leading upto Annexure-A15 and quash Annexure-A14.
- (ii) To declare that the conduct of the respondents in keeping the applicant away from duty and keeping him under suspension etc. were all without jurisdiction.
- (iii) To direct the respondents to treat the period from 7.7.96 to 8.2.2000 as duty for all purposes and to extend all service benefits, including salary with increments, arrears with interest at the rate of 12% per annum.
- (iv) To issue such other further reliefs as this Hon'ble Tribunal may deem fit in the facts of this case."

[2] The respondents have contended in their reply that the applicant had started growing beard without taking permission. The applicant was directed to undergo medical examination. The Physician of the Hospital stated in his report that the applicant is suffering from sabortic dermatitis and psoriasis of beard area and advised that he should not shave for five years. As the illness of the applicant was presumed to be of contagious nature the Officer in Charge of Kavaratti Police Station was directed to relieve the applicant from duty with an advise to come back after curing the illness. By order dated 10.8.1996 the applicant was directed to report to Government Hospital at Ernakulam for medical check up, as Skin Specialist was not available in the Islands. Inspite of repeated directions the applicant did not

carry out the order to report before the Government Hospital at Ernakulam. Thereupon the applicant was placed under suspension on 13.10.1998. After receiving representation from the applicant it was decided to revoke the suspension by order dated 20.9.1999. Even then he did not join duty till 8.2.2000. No justification has been by the applicant for his absence. A show cause notice was given to him regarding his period of absence. After considering the reply to the show cause notice, it was decided to treat period from 20.9.1997 to 7.2.2000 as unauthorised absence, leave without pay and dies-non.

[3] We have heard the learned counsel for the applicant Shri Sathyanadhan for Shri MV Thamban and learned the counsel for the respondents Shri S.Radhakrishnan. We have also carefully perused the documents.

[4] The issue for consideration in this OA is whether the impugned order treating the period of absence from 20.9.1997 to 7.2.2000 as authorised absence, leave without pay and *dies non* suffers from any legal infirmities or arbitrariness. The respondents relieved the applicant on 7.7.1996 on the ground that he is suffering from a contagious disease. But the medical report dated 24.6.1996 available in the records at Annexure-A/1 does not indicate that the applicant is suffering from a contagious disease. It would appear that the respondents themselves decided that it is a contagious disease without medical opinion. Even if the applicant was suffering from any

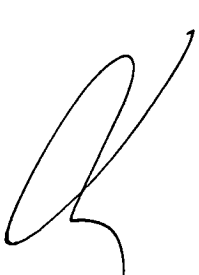


illness, it would have been more appropriate to advise him to take medical leave. The next argument of the respondents that he disobeyed the directions to report to Government Hospital at Ernakulam also cannot be sustained because the applicant left for Kochi for medical consultation before the order dated 10.8.1996 could be communicated to him. He had left on the basis of the advice given by the Physician of the Kavratti hospital that he should consult a Dermatologist at Kochi. The said advice dated 18.7.1996 (A/3) did not specify that he had to consult a Government Dermatologist. The applicant however is not completely blameless either. After obtaining the medical opinion from Dr. Gopalakrishnan, Dermatologist, Kochi on 14.8.1996 the applicant kept silent for nearly two years. He should have immediately reported back to his employers armed with the certificate given by Dr. Gopalakrishnan which clearly states that the applicant is not suffering from any contagious disease. The conduct of the applicant is clearly mysterious. It is only on 24.8.1999 i.e. nearly one year after he was suspended that he makes a representation along with a copy of the certificate given by Dr. Gopalakrishnan (A/7). There is nothing on the record to show that he had submitted the said certificate earlier. The counsel for the applicant also did not have an answer, when asked during the hearing, why the applicant did not immediately go back to the employer along with the certificate. The lethargy of the applicant cannot however come to the rescue of the respondents from discharging their legal obligations. They have suspended the applicant and



thereafter revoked the suspension. There is no charge sheet. No punishment. Therefore, the period of suspension i.e. between 13.10.1998 to 20.9.1999 has to be treated as duty for all purposes, including pay and allowances. Not treating the said period as duty for all purpose is clearly illegal as per FR 54 (2) and (3). As for the remaining period, the applicant is entitled to medical leave as there was clearly a medical condition that justified his absence. The applicant had no alternative but to remain away from duty till he was allowed to join with a trimmed beard as envisaged in the Ministry of Home Affairs letter dated 8.3.1989. (A/16) The following extract from the said letter is relevant:


"(iii) A member of the Force may be permitted to grow beard if there is sufficient justification on medical grounds for him to do so, for the duration medically advised, on the express condition that the beard would be kept clean and trimmed. Photographs of such person with beard will also be kept on service records. "




[5] It would appear that the respondents were not aware of the letter of the Home Ministry dated 8.3.1989 when they relieved him or when they suspended him. In any case, the action of the respondents in not granting medical leave when a medical condition was reported is clearly illegal and arbitrary. We are therefore of the considered opinion that there is substantial merit in the prayer of the applicant.

[6] For the reasons stated above, the OA is partly allowed. The impugned order is quashed and set aside. It is declared that

the applicant is entitled to full pay and allowances and all service benefits during the period of his suspension between 13.10.1998 to 20.9.1999. The said period shall be treated as duty for all purposes. The remaining period of his absence shall be adjusted against leave available to his credit including commuted leave on medical grounds. If the available leave is not sufficient to cover the remaining period, the balance will be treated as extraordinary leave on medical grounds qualifying for pension under Rule 21 of CCS (Pension) Rules. Necessary orders shall be passed accordingly by the respondents within a period of two months from the date of receipt of copy of this order. No costs.


(Dr. K.S. Sugathan)
Member (Administrative)


(George Parackal)
Member (Judicial)