

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**

O.A. No. 383 OF 2007

Monday, this the 29th day of October, 2007.

CORAM :

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

K.V.Narayanaswamy
Retired Postmaster
III/185, Narayana Nivas
Gramam, Palampalacode
Palakkad District : **Applicant**

(By Advocate Mr. Sajan Varghese K.)

Versus

1. The Chief Postmaster General
Department of Posts
Kerala Circle, Thiruvananthapuram
2. The Postmaster General
Northern Region
Department of Posts
Calicut
3. The Senior Superintendent of Post Offices
Palakkad Division
Department of Posts
Palakkad : **Respondents**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 29.10.2007, the Tribunal on the same day delivered the following :

O R D E R

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

The applicant is a retired Sub Post Master. While he was functioning as Sub Post Master, Vadakkencherry MBR, one Shri C.R.Venkatachalam was proceeded under Rule 14 of the CCS (CCA) Rules, 1965 in which the applicant was cited as a prosecution witness.

17th January, 2002 was the date fixed for the inquiry proceedings when the presence of the applicant was sought for evidence purpose at

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Puthiyankom Post Office. When the applicant reached there he fell down by which fracture was occurred on his left thigh bone. It was the Presenting Officer, who admitted the applicant to Crescent Hospital at Alathur for immediate treatment. A surgery was conducted upon the applicant on 19.01.2002 and the applicant was an inpatient of the said hospital till 30.01.2002. On his discharge he was advised to have bed rest till 28.05.2002. The applicant, unaware of the existence of the provisions of Rule 44 and 45 of the CCS (Leave) Rules, 1972 which provides for Special Disability Leave, applied for and was granted commuted leave to the extent available and earned leave on medical certificates for the balance. After being known about the availability of the Special Disability Leave, the applicant made a representation to the respondents on 29.04.2002 but the applicant was informed that his case is not covered under the provisions of Rule 44 / 45 of CCS(Leave) Rules as "Special Disability Leave can be granted to an official only for the disability caused in consequence of due performance of official duties or in consequence of his official position . The injury is not a consequence of his official performance but only an accident." Order dated 09.02.2004 refers. Hence this O.A.

2. Respondents have contested the O.A. According to them, the applicant has poor eye sight and in 2002 he was granted leave on account of his eye sight vide Annexure R-1. Annexure R-2, which is copy of Rule 44, should apply to a Government servant whether permanent or temporary, who is disabled by injury accidentally incurred in, or in consequence of, the due performance of the official duties. The applicant's case doesn't come under the same. In fact, the applicant vide Annexure R-3 has requested for sanction of Special Disability Leave, " if " the same is permissible.

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3. Counsel for applicant submitted that the applicant being a prosecution witness could not escape from attending the enquiry and it is only when he went to attend the enquiry, on the spot where the enquiry took place, he fell down and incurred injury which accidentally occurred in the performance of his duties. As such, his case is fully covered under Rule 44 read with Rule 45 of CCS (Leave) Rules, 1972.

4. Counsel for respondents invited Para 3 of the reply wherein it was averred that the applicant himself was one of the causative factors for the genesis of the disciplinary case. The fact of his poor eye sight was also reiterated in the course of argument

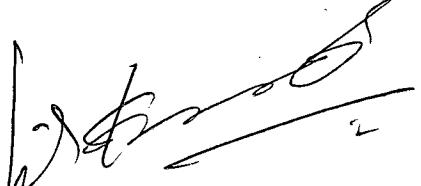
5. Arguments were heard and documents perused. Rule 45 talks of injury accidentally incurred in, or in consequence of due performance of official duties. The applicant was away from office to attend enquiry proceedings and his absence for the day was treated as duty. Thus, on the very particular day, the applicant was on duty and while performing his duties only, he fell down which resulted in the thigh fracture, leading to surgery and subsequent bed rest. As such, the applicant is entitled to Special Disability Leave. The provisions of Rule 45 cannot be restricted only to certain accidents, such as, when an individual is working in factory, while working, he has got his hand or legs cut. All that is to be seen is the fact that (i) there was an injury, (ii) whether that injury was caused by way of any accident and (iii) while the accident takes place, whether the applicant was performing his official duties. If answer to these questions is in affirmative, the individual is entitled to Special Disability Leave. In the instant case, the answer is in affirmative and as such, the applicant is entitled to the benefit of Special Disability Leave.

OA is allowed. The impugned order dated 09.02.2004 (Annexure A-5) is

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quashed and set aside. The applicant will be entitled to the benefit of Special Disability Leave for 132 days and correspondingly the leave debited against earned leave will be treated as credit in his earned leave account and applicant is entitled to leave encashment in accordance with the rules. Respondents are directed to work out the amount due to the applicant and pay the same accordingly within a period of three months from the date of communication of this order. No costs.

Dated, the 29th October, 2007.



K.B.S. RAJAN
JUDICIAL MEMBER

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