

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.176/87.

Kum.A.J.Chavan,
C/o. Shri G.S.Walia,
89/10, Western Railway
Employees' Colony,
Matunga Road, Bombay-19. .. Applicant

v/s

1. Union of India through
Chief Supdt.Central Telegraph
Office, Bombay-400 001.
2. Chief Supdt.Central Telegraph
Office, Bombay-400 001.
3. Director General,
Department of Telecommunications,
New Delhi.
4. General Manager,
Telecom Circle,
Maharashtra,
Bombay.
5. Assistant Chief Supdt.G-1,
Central Telegraph Office,
Bombay-400 001. .. Respondents.

Coram: Hon'ble Vice-chairman B.C.Gadgil

Hon'ble Member (A) J.G.Rajadhyaksha

Appearance

Mr.G.S.Walia, Advocate for
the applicant.

ORAL JUDGEMENT Dated: 15.6.1987.
(Per Vice-chairman B.C.Gadgil)

The applicant is an employee working as
Telegraphist in the office of the Chief Superintendent,
Central Telegraph Office, Bombay.

Originally, she was granted leave for four
days from 4.5.1984 to 7.5.1984. However, she did not
join her duty on 8.5.1984. On the contrary, she applied
for extension of the leave from 8.5.1984 to 1.6.1984.
She resumed duty on 2.6.1984.

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The authority in question treated the period of absence from 8.5.1984 to 1.6.1984 as 'Dies-non'. It is this order that is challenged before us.

We had issued notice for Admission to the Respondents. Mr. Atre (for Mr. P. M. Pradhan) appeared for the Respondents.

We have heard Mr. G. S. Walia for the applicant and Mr. S. R. Atre for the Respondents. Mr. S. R. Atre made available the records for our perusal from the file.

It appears that it was not possible for the department to grant leave to the applicant and therefore it was refused earlier. Mr. Atre submits that, thereafter, the applicant again applied for short leave. At that time, she was informed that she should join duty immediately after the expiry of the four days leave. It appears that the applicant accepted this ^{and} proceeded on leave.

The applicant's contention is that after going to her village, she fell ill and hence she could not join duty on 8.5.1984. She had sent communications to the department about the said illness and applied for leave. It is true that the department is not expected to pass an order refusing the leave, if the applicant was really ill. The Respondents' contention is that the applicant was not at all ill and that she made a show by submitting a medical certificate which cannot be implicitly relied upon.

Our attention is drawn to the certificate dated 22.5.1984. It is signed by Dr. J. R. Zantye at Malvan stating therein that the applicant was suffering from cough and fever and that it would be necessary to

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extend her leave for 10 days from 23.5.1984. The said certificate is given in a form where the following words appear.

"I, the Dr.J.R.Zantye, after careful examination of the case, hereby certify that Kum. A.J.Chavan whose signature given above is suffering from cough and fever."

On the top of the form, there is space where the patient has to sign. The applicant has signed in this space on 23.5.1984, though the certificate is issued by the doctor on 22.5.1984. It was contended by Mr.S.R.Atre that the Doctor could not have given such a certificate dated 22.5.1984 though a statement is made that the applicant has signed on top of the form on 23.5.1984.

The applicant also applied to the department for permission to resume duty from 2.6.1984. This application is dated 1.6.1984 and it is received by the Department on that day. The applicant stated that the necessary medical 'fit' certificate is attached. The certificate issued by the above mentioned doctor is, however, dated 2.6.1984. It was contended by Mr.S.R. Atre that if the communication is dated 1.6.1984, there could not have been any ~~reference~~ ^{reference} therein to the certificate of subsequent date i.e.2.6.84.

Mr.Walia submits that the applicant should have been given personal hearing before passing the impugned order of 'Dies-non'.

It is material to note that the said order is not a penalty under the prescribed rules. It will be very difficult to accept the contention of Mr.Walia that

an order of this type should always be preceded by an enquiry. Mr.Walia submitted that a regular departmental ^{need} enquiry ~~would~~ not have been held but a show cause notice should have been issued. This is not acceptable to us as everything will depend upon the facts of each case. As stated above, there is much substance in the contentions of the Respondents that the certificates issued by the doctor cannot be treated as acceptable and good evidence. In that background, the impugned order cannot be successfully challenged.

The result is that the application is summarily rejected. The file has been returned to Mr.S.R.Atre who had shown it to us.


(B.C.GADGIL)
Vice-Chairman


(J.G.RAJADHYAKSHA)
Member(A)