

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1228/96.

Pronounced, this the 21st day of April 1998.

Coram: Hon'ble Shri P.P.Srivastava, Member(A).

P.G.Narvankar,
3/44 ESIC Nagar,
New Link Road,
Andheri (West),
Mumbai - 400 053.

... Applicant.

(By Advocate Shri G.K.Masand)

V/s.

1. Regional Director,
Employees State Insurance
Corporation, Regional
Office, ESIC Bhavan, N.M.Joshi
Marg, Lower Parel,
Mumbai - 400 013.

2. Director,
Employees State Insurance
Corporation, Sub-Regional
Office, Panchdeep Bhavan,
Survey No.689/690 Bibwewadi,
Pune - 411 037.

... Respondents.

(By Advocate Shri M.I.Sethna)

O R D E R

(Per Shri P.P.Srivastava, Member(A))

The applicant joined Employees State Insurance Corporation in 1968 at Bombay. He worked at different places and in November, 1991 he was transferred to Sub-Regional Office at Pune and he joined his duties at Pune in November, 1991 and continued in the employment at Pune till 16.10.1995, whereafter he was transferred back to Bombay. During the period of the applicant's posting at Pune, the applicant availed of leave in different spells due to his own sickness, as well as, for the sickness of his daughter. The applicant submitted leave applications along with requisite documents to the respondent administration, but have not sanctioned the



...2.

leave. The applicant has brought out that he has written many letters which have been enumerated in para 6 of the O.A. concerning sanction of leave and these applications for leave have been supported by medical certificate as well as other documentary evidence. The applicant has therefore approached the Tribunal for directing the respondents to take immediate steps to sanction the leave applied for by the applicant for the periods from 1.9.1993 to 7.9.1993 and 13.9.1993 to 31.12.1993 and consequent relief of payment of arrears etc.

2. The respondents have filed their reply. They have brought out that after considering the record, the respondent administration have sanctioned leave for the period which was permissible under rules and have not sanctioned certain periods, details of which are given in para 7 of the written statement. The respondents have brought out that this decision has been taken on 26.3.1997.

3. The counsel for the applicant has brought out during the arguments that the respondent administration has sanctioned leave during the pendency of the O.A. and that the only dispute now remaining concerns for various periods as shown in (Ex. 2 of page 10) brought out with the sur-rejoinder ~~filed~~ by the respondent administration. From the record ~~with~~ the sur-rejoinder, leave for it is seen that the period from 1.9.1993 to 7.9.1993 has been taken on account of the daughter's sickness and the period from 10.10.1995 to 16.10.1995 is also taken on account of the daughter's sickness. The remaining period shown in (Ex. II) have been taken by the applicant for his own sickness.



James C. Moore

4. counsel for the The respondent administration has pleaded that the administration has a right to refuse leave in case they are not satisfied with the authenticity of the medical certificate submitted by the applicant. While the counsel for the applicant has argued that the only way the leave can be denied to the applicant for sickness is in terms of the Rule where the department orders the applicant to submit himself before a medical authority prescribed by the administration. The respondents have claimed that in terms of Rule 7 of the Leave Rules leave cannot be claimed as a matter of right and as per Rule 19(5) of the Leave Rules, leave on medical grounds cannot be claimed as a matter of right. Rule 19(5) reads as under :

"19(5) The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited."

The counsel for the applicant has argued that in terms of para 19 of the Leave Rules grant of leave on medical certificate to gazetted and non-gazetted government servants (1) An application for leave on medical certificate made by (i) a Gazetted Government servant, shall be accompanied by a medical certificate in Form 3 given by an Authorised Medical Attendant; (ii) a non-gazetted Government servant, shall be accompanied by medical certificate in Form 4 given by an Authorised Medical Attendant or a registered Medical practitioner; In terms of Rule 19(3) "The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date" and in terms of Rule 19(4) "It shall be the duty

of the Government Medical Officer referred to in sub-rule(3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose he may either require the applicant to appear before himself or before a medical officer nominated by himself."

5. The counsel for the applicant has argued that in terms of these rules, the only discretion the leave sanctioning authority has is that he can refer the case to Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon for a second medical opinion, but he himself cannot disregard the medical certificate without the second opinion of the Civil Surgeon or Staff Surgeon.

6. The counsel for the respondents, on the other hand, has argued that in terms of Rule 19(5) the grant of medical certificate does not confer upon the government servant right to leave and the competent authority is required to grant the leave. The counsel for the respondents has argued that in case if the argument of applicant's counsel is accepted there will be no necessity of sanctioning any leave on medical grounds by the Competent Authority as the Competent Authority would have no discretion to either sanction or not to sanction the leave. The counsel for the applicant has also argued that in the present case the applicant has submitted his leave application along with certificate from time to time at the time when he fell sick i.e. in 1993, 1994 and 1995, but the respondent administration has not taken any decision on this application and now only on 26.3.1997 after the applicant has filed the O.A. they

have decided not to sanction leave for certain periods which have been brought out in (Exhibit - 2) of the sur-rejoinder of the respondents. The counsel for the applicant has argued that the respondents could have sent the applicant for second medical opinion if they were not satisfied with the medical certificate submitted by him, but that occasion cannot arise now after the lapse of about 2 to 3 years. Therefore, according to the counsel for the applicant, the respondents are dutybound to sanction the leave of the applicant on the basis of the medical certificate submitted by him.

7. After hearing the arguments of both the counsel, I am of the view, that the leave which has been applied by the applicant on the basis of sickness of self cannot be denied to him, when the respondent administration has not taken a decision on the same for the last about 2 years. The rule envisages taking of second opinion from the Government Medical Officer to assist the competent authority to come to the conclusion about the authenticity of the medical certificate. In terms of Rule 19(5) also it is evident that the leave is required to be sanctioned by the Competent Authority and it does not confer any right on the employee for going on leave on grant of medical certificate. However, in view of the fact that the respondent administration have not taken any decision for a long time, I am of the view, that it is not possible in the framework of the Rules for the respondent administration to deny the leave to the applicant for self-sickness. As far as the refusal of the leave on the basis of daughter's sickness is concerned the applicant has no right for that leave in terms of Rule 7 of the

leave rules and the action of the respondent administration in not sanctioning the spell of leave asked for by the applicant for daughter's sickness cannot be questioned.

8. In the result, I dispose of this O.A. ~~in~~ terms of the following directions :

O R D E R

(1) The leave applied for by the applicant for self-sickness as brought out in Ex. 2 of the sur-rejoinder is to be treated as leave on medical grounds and the rejection of this leave by the respondent administration dt. 26.3.1997 is quashed.

(2) The leave rejected for 1.9.1993 to 7.9.1993, ~~10.10.1993 to 16.10.1995~~ and 10.10.1995 to 16.10.1995 asked for on account of daughter's sickness and rejected by the respondent administration is according to the rules and is not required to be interfered with by the Tribunal.

(3) The O.A. is therefore disposed of in terms of the above directions.

(4) The question whether the competent authority can reject the leave asked on the basis of medical certificate from the private medical practitioner and from Authorised Medical Attendant is left open.

(5) No costs.

(P.P.SRIVASTAVA)
MEMBER(A).

B.