

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.852/2001

Dated this Thursday the 11th Day of April, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (Administrative).

H.J. Dukhande,
Data Entry Operator, EDP,
O/o the Regional P.F. Commissioner,
Sub Account Office, Malad,
Mumbai - 400 064.

R/at : A/403, Umang Coop. Hsg. Society,
Rukson Nagar, Above Highway Hospital,
Dahisar (East), Mumbai-400068.

.. Applicant.

Versus

1. Central P.F. Commissioner,
Employees P.F. Organisation (Head Office),
Bhavishya Nidhi Bhavan,
Bhikaji Cama Place,
New Delhi - 110 066.
2. Regional P.F. Commissioner - (I),
Bhavishya Nidhi Bhavan,
Regional Office, Bandra (E),
Mumbai - 400 051.
3. Shri K.S. Arya,
Regional P.F. Commissioner-(II),
Office of the Regional P.F. Commissioner,
Sub Account Office,
Moti Udyog Nagar, Ramchandra Lane,
Malad (West),
Mumbai - 400 064.

.. Respondents.

(By Advocate Shri R.K. Shetty)

ORDER (Oral)
{ Per : Smt. Shanta Shastry, Member (A) }

The applicant working as Data Entry Operator in
the EDP Section, Sub Accounts Office, Malad proceeded on
earned leave from 29.5.2001 to 16.7.2001 i.e. 49 days
after the same was sanctioned. While he was on leave a

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telegram was received by his mother on 20.6.2001 informing that his further leave was cancelled and he should join duty immediately. The applicant instead of joining duties submitted a medical leave application on 24.6.2001 for the period from 24.6.2001 to 13.7.2001. The applicant submits that he received salary for June, 2001. However, he had to be hospitalised again from 27.6.2001 to 2.7.2001. He again submitted a medical certificate requesting leave for a further period from 24.6.2001 to 13.7.2001. On 14.7.2001 he got himself checked medically by one Dr.M.S. Ruia, a private Doctor who declared him unfit and recommended further extension of leave upto 2.8.2001. The applicant submitted the medical certificate to Respondent No.3 on 18.7.2001. Thereafter the respondents directed the applicant to obtain a second opinion vide telegram dated 26.7.2001. He also received a telegram on the same date stating that he should resume duty immediately. He was informed that his leave for the period from 14.7.2001 to 2.8.2001 had been rejected. The applicant submits that he reported at St. Georges Hospital on 27.7.2001. According to him X-Rays were taken and a sealed cover was handed over to him which he submitted to Respondent no.3 on 8.8.2001. The applicant thereafter submitted a fitness certificate issued by Dr.C.R. Holamble on the same date. Also he submitted a leave application for the period from 3.8.2001 to 7.8.2001. He joined duties on 8.8.2001 and

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worked till 16.8.2001. He was not paid any salary for July, 2001 though he was allowed to join duty on 8.8.2001. He received another letter dated 16.8.2001 directing him to appear before the Medical Board of J.J. Group of Hospitals for fitness certificate. His joining report was also rejected and he was instructed not to sign the muster from 17.8.2001 onwards.

2. The applicant states that he visited the J.J. Group of Hospitals on 20.8.2001. He in turn was informed that the date of the examination will be intimated to his office. Thereafter, a letter was issued by J.J. Group of Hospitals on 13.9.2001 asking the applicant to appear before Medical Board at 8.30 A.M. This letter was addressed to Respondent No.3. According to the applicant no copy of the letter was separately addressed to the applicant. The applicant, therefore, could not get any intimation and, therefore, he could not appear before the Medical Board on 24.9.2001. Again the respondents on 9.10.2001 asked him to appear before the Medical Board of J.J. Group of Hospitals. The applicant on receipt of the same again wrote a letter to the J.J. Group of Hospitals for fixing the date for examination vide his letter dated 17.10.2001. In the meantime on 18.10.2001, the respondents issued a letter to the applicant wherein after listing all the developments, he was informed that his case had been referred to the appropriate authorities

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to initiate disciplinary action under Rule 10 of EPF (CC and A) Rules, 1971 for major penalties which may lead to termination of the services.

3. Thereafter the applicant filed the present O.A. on 26.11.2001 for redressal of his grievances praying for a direction to the respondents to take him back on the duty on the basis of fitness certificate given by the private medical practitioner, to direct him for special medical examination by the Medical Board of J.J. Group of Hospitals on the appointed day and not to keep him indefinitely out of employment, to treat the applicant as on medical leave on the basis of the Medical Certificate already produced by him for the period from 25.6.2001 to 7.8.2001 and pay him the leave salary based on the leave due at his credit with 18% interest. He has also demanded the salary from 8.8.2001 to 16.8.2001 as he has performed the duty alongwith interest at 18%. He also asked to treat the period from 17.8.2001 onwards till date as duty and put him back on duty.

4. While the O.A. was pending the respondents wrote a letter to the applicant on 4.3.2002 reminding him about his non submission of the fitness certificate from the

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Medical Board of J.J. Group of Hospitals and non resumption of the duties. Finally the applicant was allowed to resume his duties with effect from 13.3.2002.

5. The respondents have insisted that the applicant ought to have produced the medical certificate of fitness from the Medical Board of J.J. Group of Hospitals. According to them the applicant failed to appear before the Medical Board inspite of the respondent's letter dated 16.8.2001. The applicant had also failed to report for duties inspite of having sent him telegrams to resume duty and he has produced only a medical certificate from private doctor which was not acceptable.

6. We have heard the applicant in person and Shri R.K. Shetty, for the respondents. We find that the applicant was asked to appear before the Medical Board of J.J. Group of Hospitals. The applicant approached the J.J. Group of Hospitals when he was told that he shall be intimated about the date of examination. The J.J. Group of Hospitals had intimated that the examination will be held on 24.9.2001, but it is seen from the reply of the respondents, that the respondents themselves received the aforesaid communication from the J.J. Group of Hospitals on 24.9.2001 when the examination was to be held. The applicant had not received any intimation himself about the date of examination, therefore, he could not appear.

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The respondents, therefore, again requested the J.J. Group of Hospitals to fix another date and time for the examination. The applicant also approached the J.J. Group of Hospitals on 17.10.2001 requesting to give another date as he had not received the intimation. The applicant also informed the respondents vide his letter dated 19.10.2001 that he had been unable to appear before the Medical Board as no date had been intimated to him and he had further requested the J.J. Group of Hospitals to fix the date. Thereafter, after a long gap of 5 months the respondents have allowed the applicant to resume his duties subject to his appearing before the Medical Board of J.J. Group of Hospitals and producing the necessary certificate. Although the respondents have put the blame on the applicant, we find that the applicant has taken action to comply with the directions of the respondents, he has taken initiative to request the J.J. Group of Hospitals but there was no communication from the J.J. Group of Hospitals intimating about the medical examination. The respondents also admit that they could not receive any communication from the J.J. Group of Hospitals. The respondents have also submitted that it was for the applicant to have pursued with the matter with J.J. Group of Hospitals. As already stated the applicant had pursued the matter with the J.J. Group of Hospitals but he kept quiet after 17.10.2001 hoping that he would be

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called for medical examination. We hold that the applicant cannot be blamed. Thus we find that there is a lack of coordination and lack of proper communication due to which the applicant could not get himself examined by the Medical Board of the J.J. Group of Hospitals. Now that the respondents have already allowed the applicant to resume his duties and stipulated that he should get himself examined by the Medical Board, looking at the state of affairs, we consider it necessary that a time frame for the applicant to be examined by J.J. Group of Hospitals needs to be laid down. Accordingly the respondents are directed to coordinate the matter in consultation with the J.J. Group of Hospitals and ensure that the applicant is examined by Medical Board as required within a period of one month from the date of receipt of copy of the order. In case the said examination is not carried out within the stipulated period the respondents shall not insist on production of further medical certificate from the Medical Board and shall allow the applicant to continue. It goes without saying that the applicant shall also cooperate in the matter fully.

7. As regards the relief in respect of payment of salary, we find that the applicant has worked from 8.8.2001 to 16.8.2001 and is entitled for salary for that period and the respondents also agreed that he shall be

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paid ^{the}with salary for that period. As regards payment of salary for the absence period the respondents have already intimated to take disciplinary action against the applicant, therefore, the regularisation of the period of absence shall be subject to the final outcome of the disciplinary action and the decision taken on the same by the respondents. Therefore, no orders are passed on any relief in regard to the period of absence. The O.A. is disposed of accordingly, without any costs.

Shanta

(Smt. Shanta Shastry)
Member (A)

Birendra

(Birendra Dikshit)
Vice Chairman.

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to applicant respondent (s)
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