

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SIXTEENTH DAY OF FEBRUARY, 1987

Present: Hon'ble Shri.Ch.Ramakrishna Rao Member(J)
Hon'ble Shri L.H.A.Rege Member(AM)

APPLICATION No.468/86(F)

K.Satyanarayana,
H.No.7181, Yellapur Oni,
Hubli - 580 028.

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APPLICANT

Vs.

The Divisional Engineer,
Telegraphs, 19/B,
Hindustan Complex,
B.V.K.Iyengar Road,
Bangalore - 560 009.

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RESPONDENT

(Shri M.S.Padmarajaiah ... Advocate)

This application has come up before the court today. Hon'ble Shri L.H.A.Rege, Member(AM) made the following :

O R D E R

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the impugned orders dated 10.1.1985(Annexure-A), 19.1.1985(Annexure-C) and 2/4.2.1985(Annexure-H) passed by the Divisional Engineer, Telegraphs, Bangalore(DE for short), the respondent, and prays that the same be quashed and that the respondent be directed to pay his salary for the duty rendered by him, on the dates viz., 8.1.1985, 9.1.1985 and 29.1.1985 to 31.1.1985, which days, were treated as dies non, by the respondent.

2. At the material point of time, the applicant was working as Office Assistant in the office of the DE, the respondent. On 10.1.1985, the respondent informed the appli-

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cant(Annexure-A), that it was found, that he was not present in the General Section of his Office, from 10.00 hours to 17.00 hours, on 8.1.1985, and therefore his absence from duty on that day, was treated as dies non. The applicant represented thereon, to the respondent on 11.1.1985(Annexure-B), explaining that he was actually present in the office, but the Section Supervisor (General), had evicted him from the Section, stating that he had no place and work therein. On 19.1.1985, the respondent informed the applicant(Annexure-C), that he was unauthorisedly absent from duty, from 13.30 hours on 9.1.1985 and had initiated^{LL} the attendance register, on 9.1.85, at 1700 hours in respect of 8.1.1985 and 9.1.85 and therefore, this absence was being treated as dies non, under Rule 62, of the Post and Telegraph Manual Volume III. The applicant submitted a representation thereon, to the respondent, on 21.1.1985(Annexure-D), stating, that he had signed the attendance register on 8.1.1985 at 1700 hours and that he was on casual leave for half day, the next day i.e., on the forenoon of 9.1.85, and therefore, the question of his signing the attendance register on 9.1.85, for 8.1.85 and 9.1..85 did not arise. He had further stated, that even though he was on duty, he was treated as absent, and no work and seat were allotted to him in the Section. Furthermore, he submitted, that if he had really signed the above entries on 9.1.85, the Section Supervisor could have promptly objected thereto, but this was not done and therefore, the action of treating him as dies non, on 8.1.85 and 9.1.85 was not proper.

3. On 30.1.1985(Annexure-E), the applicant had addressed a letter to the respondent, requesting him to grant earned leave, from 29.1.1985 to 31.1.85, in lieu of casual leave of one-and-a-half day as requested for, in his letter dated 28.1.85.^{LL}

~~LL The applicant, in his letter dated 28.1.85, requested for leave for 29.1.85 to 31.1.85, in lieu of casual leave of one-and-a-half day as requested for, in his letter dated 28.1.85.~~^{LL}

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The respondent, in his telegram dated 29.1.1985(Annexure-F) had sanctioned casual-leave of one day, to the applicant, for 29.1.1985 and directed him to resume duty on 30.1.1985. By his telegram dated 30.1.1985(Annexure-G), the respondent informed the applicant, that earned leave from 29.1.85 to 31.1.85 applied for by him, was not sanctioned and directed him to resume duty forthwith. Since the applicant did not resume duty as directed, the respondent informed the applicant on 2/4/.2.1985(Annexure-H), that his unauthorised absence from duty, from 29.1.1985 to 31.1.1985, was treated as dies non, without prejudice to any disciplinary action, which may be initiated against him, under C.C.S.(CCA) Rules, 1965.

4. The applicant appealed thereon to the Director, Telecommunication, Bangalore (Director, for short) on 6.2.1985 and 7.2.1985(Annexures J and K respectively) alleging malice and arbitrariness, on the part of the respondent, in treating the above period of his absence as dies non. In reply to this appeal, the Director informed the respondent on 18.2.1985(Annexure L-1), that grant or rejection of leave, was the full discretion of the leave sanctioning authority and the question of revoking the decision of the latter in the case, did not arise, and therefore, he rejected the appeal of the applicant. This was communicated to the applicant by the respondent on 25.2.1985 (Annexure-M).

5. Aggrieved by this decision, the applicant has come before this Tribunal for redress.

6. The applicant presented his case in person. The leit motif of his contention is, that the respondent had intently violated the provisions of C.C.S.(CCA) Rules, 1965

and the principles of natural justice, to cause him harassment, and that the respondent treated the period in question, as dies non, without affording him opportunity for explanation, which is violative of natural justice. He submitted, that he was on duty on 8.1.85 upto 1700 hours and had on 8.1.85. itself, applied for casual leave on the forenoon of 9.1.1985, but the Section Supervisor, who had left the office earlier on 8.1.85, had made a cross-mark in the attendance register, against the name of the applicant, who had signed the attendance register, just below this cross-mark. He stated, that the respondent had sanctioned him casual leave for half-a-day, on the forenoon of 9.1.85, as applied for by him and he had availed of the same, to attend a case relating to a writ petition filed by him, in the High Court of Judicature, Karnataka, the notice regarding which, had been served on the respondent. This according to the applicant, seems to have provoked the respondent, to take a vengeful attitude towards him, as barely after 10 days on which the above writ petition was admitted i.e., on 19.1.85, he issued a letter to him (Annexure-C), treating 9.1.85 as dies non against him, on the ground of his unauthorised absence from duty. The applicant submitted that this was ulteriorly motivated, as, if he was really absent on 9.1.1985, after 1330 hours, the respondent could have initiated action promptly and not after a lapse of 10 days, during which period, the above writ petition was admitted. According to the applicant, the respondent had admitted, in Annexure-C, that he was absent from duty only from 1330 hours, and yet had treated the entire day, viz., 9.1.85 inclusive of the casual leave of half-a-day sanctioned to him that day, as noted in the attendance register, as dies non and deducted his salary for that day. The applicant contends, that the

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leave once sanctioned to him cannot be treated as dies non, and that the respondent had done this out of revenge.

7. The applicant further submits, that he had applied for casual leave of a day and a half, on 29.1.85 and on the forenoon of 30.1.85. Later, on 30.1.85, the applicant requested the respondent (Annexure E) to sanction earned leave of 3 days, from 29.1.85 to 31.1.85 instead, but this was denied to him and even the casual leave sanctioned to him earlier on 29.1.85 was cancelled.

8. In repudiating the contentions of the applicant, learned Counsel for the respondent averred, that the unauthorised absence of the applicant, on the days in question, was treated as dies non, in accordance with the rules of the Post and Telegraph Department. According to him, the absence of the applicant on 8.1.85, was treated as dies non, on the basis of the report dated 9.1.85, of the Senior Section Supervisor (General and Pensions Section) (Annexure-I), who had remarked, that the applicant was absent from duty in the Section from 1000 hours to 1700 hours on that day and had left the Section, after signing the attendance register at 1000 hours. The applicant was marked dies non for this day, in accordance with Rule 62 of P&T Manual Volume III, which reads thus :

"Absence of officials from duty without prior permission or when on duty in office, they have left the office without prior permission, or while in office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed to be treated as 'DIES NON' i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authority might take against the persons resorting to such practices".

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9. According to Counsel for the respondent, treatment of unauthorised absence as dies non, is not tantamount to imposing penalty, as it is not one of the statutory penalties specified in Rule 11 of the CCS(CCA) Rules, 1965. Hence, it was not necessary to call for the explanation of the applicant, before treating the period in question as dies non.

10. Counsel for the respondent admitted, that the applicant was granted casual leave on 29.1.1985, on condition, that further extension of leave will not be allowed and that he should report for duty the next day. He submitted, that according to Rule 16 of the Leave Rules, applicable to the Central Government servants, leave cannot be claimed as a matter of right and that leave of any kind can be refused or reviewed by the competent authority, when exigency of public service so demands. As the applicant failed to resume duty on 30.1.85, despite the notice served by the Enquiry Officer on him, to attend a departmental enquiry on that day, the leave sanctioning authority refused earned leave applied for by the applicant, for the period from 29.1.85 to 31.1.85 and directed him to resume duty at once. As the applicant disobeyed the instructions of the respondent, the period of his unauthorised absence from 29th to 31st January 1985 was treated as dies non, in accordance with Rule 62 ibid. Counsel affirmed, that the appeal of the applicant, was rightly rejected by the Director and that there are no grounds to revoke the orders passed by the respondent, treating the period of unauthorised absence of the applicant on the dates in question, as dies non.

11. We have heard the rival contentions and examined the matter carefully. It is evident, that the respondent had sanctioned casual leave to the applicant, on the forenoon of 9.1.85 and 29.1.85. Casual leave for this period having

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once been sanctioned by the respondent and availed⁷ by the applicant, in fairness, the respondent could not have cancelled the same at a later date and therefore in our view, the applicant was entitled to avail of the casual leave sanctioned to him and consequently, this period cannot be treated as dies non by the respondent. As for rest of the dates, there is evidence to prove, that the applicant did not attend duty and therefore, the respondent was within his right to treat this period as dies non, in accordance with Rule 62 ibid, though it would have been desirable, in the interests of justice, to afford an opportunity to the applicant, to give his explanation, before taking a decision in the matter. We must also observe¹² that the Director of Tele-Communication, Bangalore, instead of giving a laconic reply to the applicant, should have elaborated reasons, for rejecting the appeal and should have sent the reply direct to the applicant instead of through the respondent.


12. Nevertheless, taking a holistic view of the circumstances, under which the period in question was treated as dies non, by the respondent against the applicant, we make the following order :

We uphold the decision of the respondent as affirmed by the Director, Tele-communication, Bangalore, in appeal, to treat the period in question as dies non, except for the dates viz., the forenoon of 9.1.1985 and 29.1.1985 when casual leave was actually sanctioned by the respondent and availed of by the applicant. The applicant will be entitled to receive his salary and allowances for this period of casual leave sanctioned by the respondent.

The application is disposed of in the above terms.

But, We make no order as to costs.


MEMBER(J)


MEMBER(AM) 16.2.1987

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