

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL H DERABAD BENCH HYDERABAD

O.A.No. 1570/93

Between:

Date of Order: 14.6.95.

Mrs. A.Saraswathi

... Applicant.

And

1. The Union of India, Rep. by
The Secretary, Ministry of Planning,
Department of Statistics,
Govt. of India,
New Delhi.
2. The Director,
National Sample Survey Organisation,
(Field Operations Division)
West Block, No.8, Wing.6,
First Floor, R.K.Puram,
New Delhi - 110 022.
3. The Regional Assistant Director,
National Sample Survey Organisation,
(Field Operations Division),
A.P.(North), Hyderabad - 500 004.

... respondents.

Counsel for the Applicant : Mr.J.V.Lakshmana Rao

Counsel for the Respondents : Mr.K.Bhaskara Rao,CGSC.

CORAM:

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

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O.A. 1570/93.

Dt. of Decision : 14-06-95.

ORDER

¶ As per Hon'ble Shri A.B. Gorthi, Member (Admn.) ¶

The applicant was working as an Investigator in the National Sample Survey Organisation, when allegedly she fell sick. She sought medical leave with effect from 03-05-1993 supporting her claim with a Private Medical Certificate issued by one Doctor I. Harinath Rao, M.B.B.S; D.Ch; M.S.(Gen). She joined duty on 21.06.1993. Her claim in this OA is for a direction to the respondents not to treat the period of her absence as extra-ordinary leave but to adjust it against earned leave or commuted leave due to her or even as leave not due as admissible under the CCS (Leave) Rules, 1947.

2. Respondents strongly opposed the claim of the applicant. According to them the applicant has been dodging to undergo Refresher Course Training at Bangalore. It was only because she was asked to attend the said training course; she resorted to this dubious method of avoiding the same. The respondents further stated that when asked to appear before the Civil Surgeon of Osmania General Hospital, she did not do so. Certain official communications sent to her at her leave address were returned as she had been changing her residence with a view to avoid receiving such communications. In other words, the respondents contend that the applicant was not only wilfully absent from duty, but was also guilty of mis-conduct by dis-obeying the orders of the competent authority to report to the Civil Surgeon of Osmania General Hospital. In para 4.10 of the reply affidavit, the respondents stated that their decision to convert the leave sought for by the

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applicant into extra-ordinary leave from 03-05-1993 to 20-06-1993, was justified on the following grounds:

- a) That the official has wilfully avoided the training programme.
- b) that the official has made inconsistent submission at different stages to mislead the office and continue to be on leave unauthorisedly.
- c) that the applicant has dis-obeyed the instructions
- d) that the official intentionally avoided to appear before the medical officer for 2nd opinion and absenting herself on her own accord by extending the leave in piece meal.
- e) that the official has taken undue advantage of leave rules and to drive unintended benefit and her wilful and unauthorised absence has been treated as EOL.

3. Heard learned counsel for both the parties.

Shri J.V.Lakshmana Rao, learned counsel for the applicant asserted that the applicant was genuinely suffering from Piles and Fissure for which she was advised treatment and to take rest. Her request for medical leave was rejected by the respondents for untenable reasons. As regards the direction given to the applicant to report to the Civil Surgeon, she did not receive the same and in any case no communication was received by her from the Civil Surgeon asking her to report to him on a given date/time. Shri J.V.Lakshmana Rao, learned counsel for the applicant thus contended that the applicant could not impose herself upon or appear before the Civil Surgeon in these circumstances. Subsequently, when the Civil Surgeon did write to the department directing that the applicant should report for medical examination the department had replied stating that it was not necessary, as the applicant had by then joined duty. As regards change of accommodation the contention of

the applicant is that she had changed the accommodation for certain domestic reasons and it was not her intention to avoid receipt of official communications.

4. Finally, Shri J.V.Lakshmana Rao, learned counsel for the applicant, has drawn my attention to rule 7 of the Central Civil Service (Leave) Rules, 1972, which is to the effect that leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except on the written request of the government servant. In the instant case, there is no doubt that the applicant clearly sought for medical leave, and accordingly the contention of the applicant's counsel is that the respondents were not justified in directing that it shall be treated as extra-ordinary leave. It is stated for the applicant that by grant of extra-ordinary leave, she is being made to suffer financially, in that, her increment due would be postponed correspondingly.

5. Shri N.R.Devaraj, learned counsel for the respondents gave a detailed account to how the applicant had avoided going to Refresher Course Training, as a result of which the Government was burdened with the service of an un-trained employee. It was with a view to avoid attending training course that she resorted to this method of procuring a medical certificate from a Private Medical Practitioner and seeking leave on medical ground. As the respondents were fully satisfied that the applicant was not at all sick and that she was merely refusing to proceed on Refresher Training Course, she did not deserve to be sanctioned medical leave.

6. There is no doubt that no government employee can claim any kind of leave as a matter of right. It is exclusively for the competent authority to examine all the aspects of the

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To

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3. The Regional Assistant Director,
National Sample Survey Organisation,
(Field Operations Division),
A.P., (North), Hyderabad - 500 004.
4. One copy to Mr.J.V.Lakshmana Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr.K.Bhaskara Rao, AGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.


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request for leave and decide whether the leave asked for should be granted or not.

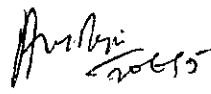
7. In the instant case, there is no dispute that the applicant sought leave on medical grounds and in support of her request for leave submitted a certificate by a Private Medical Practitioner. The respondents however seem to have come to the conclusion that she was not really sick. They also concluded that she dodged attending the refresher training course, that she avoided receiving communication from the office by changing her residence and that she wilfully refused to appear before the Civil Surgeon. In these matters, the decisions of the authority concerned seem to have been taken unilaterally and arbitrarily. The acts of commission/omission on the part of the applicant could even be culpatory or exculpatory. No inquiry or investigation was held to find the truth but mere suspicion was allowed to crystallize into fact. This is in violation of the principles of natural justice. The order of the respondents, clearly ^{punitive &} ~~positive~~ in nature, could not have been thus passed in breach of the principles of natural justice. In these peculiar circumstances of the case, the DA deserves to be allowed.

8. Accordingly, the respondents are directed to consider the request of the applicant to adjust the period of absence against any earned leave/casual leave or any period of "leave not due" which was to her credit, in accordance with the CCS (Leave) Rules, 1972.

9. DA is ordered accordingly. No costs.


(A.B. Gorthi)
Member (Admn.)

Dated : The 14th June 1995.
(Dictated In Open Court)


DEPUTY REGISTRAR(J)

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

~~THE HON'BLE SHRI A.V. HARIDASAN: MEMBER (..)~~

AND

THE HON'BLE SHRI A.B. GORTHY: MEMBER (..)

DATED 14.6.95

ORDER/JUDGMENT

M.A.NO/R.P.NO./C.P.NO.

O.A.NO. 1570/93 in

~~Admitted and Interim directions
issued.~~

~~Allowed.~~

~~Disposed of with directions~~

~~Dismissed.~~

~~Dismissed as withdrawn~~

~~Dismissed for default~~

~~Rejected/Ordered.~~

~~No order as to costs.~~

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