

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 1091 of 1995
DATE OF ORDER : 22-4-1998

BETWEEN :

T. Koteswara Rao

... Applicant

AND

Ordnance Factory
Yeddu-mailaram 502 205

2. Sr. Medical Officer
Hospital Incharge
Ordnance Factory
Yeddu-mailaram 502 205 ... Respondents

COUNSEL FOR THE APPLICANT : T. Koteswara Rao P-I-P

COUNSEL FOR THE RESPONDENTS : SHRI N.R. DEVARAJ, CGSC

CORAM :

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri B.S. Jai Parameshwar, Member (J))

None appeared for the Applicant. The Applicant was also absent when the OA was taken up for hearing. Heard Mr Devaraj, the Learned Counsel for the Respondents.

Since the OA was filed in the year 1995 we decided to consider the OA on the basis of material available on record in accordance with Rule 15(1) of the Central Administrative Tribunals (Procedure) Rules, 1987.

R
Facts :- The Applicant was employed as a Sr. Labour Officer at Ordnance Factory, Yeddu-mailaram, Medak District with effect from 29-8-1990. He worked in that

76

capacity till 14-8-1993. He submits that he was transferred on deputation basis to the Nuclear Fuel Complex, Hyderabad.

It appears the Applicant while working at Ordnance Factory ~~at~~ had remained unauthorisedly absent on 8-7-93, 9-7-93 and from 17-1-92 to 25-1-93. He was also absent from duty from 5-8-93 to 13-8-93. He had sought for regularisation of his absence and leave during the above said period and to treat him as officer-in-waiting from 16-8-93 to an ~~the concerned authority had approached~~ this Tribunal in OA No. 46/94.

He had also filed another ~~an~~ application in OA No. 47/94 praying for a direction to the Respondents to treat the period of absence from 27-4-92 to 2-5-92, during which period he was alleged to have been undergoing treatment for the injuries alleged to have been sustained by him while on duty.

Both these OAs were clubbed together and disposed of with the following directions :

"The applicant is free to ~~make~~ make a representation to R-2 in OA 46/94 i.e., Director General, Ordnance Factories, Calcutta-I, in regard to the reliefs claimed in these two OAs, and if such a representation is going to be submitted by Registered Post Acknowledgement Due by posting it by 24.3.1995, the same has to be disposed of by the said Director General, Ordnance Factories expeditiously and preferably by 31-5-1995. It is needless to add that in case the applicant is going to be aggrieved by the final order to be passed by the Director General, Ordnance Factories, he is free to move this Tribunal under Section 19 of the Administrative Tribunals Act, 1985."

Accordingly the applicant submitted his representation dated 20-3-1995 alongwith Annexures 3 to 6. Copy of the representation is at pages 10-12 of the OA. He submits that the Director has rejected all his prayers except one.

Hence he has filed this OA for the following reliefs :

"In view of the facts mentioned above this Hon'ble Tribunal may be pleased to issue a direction to the Respondents to treat me as on duty on 8-7-1993 and 9-7-93 and also from 17-11-92 to 25-1-93 and to treat me as an officer in wait from 10-0-92 to 25-1-93."

I also pray this Hon'ble Tribunal to treat the period from 27-4-92 to 2-5-92 the period during which I was undergoing treatment for the injury sustained while on duty as duty by setting aside impugned order dated 28-11-92."

The Respondents have filed a counter stating that the Applicant was transferred from Medak to Nuclear Fuel Complex, Bombay and that in accordance with the directions given by this Tribunal in OAs 46 and 47/94, the Chairman Ordnance Factory Board, Calcutta granted the relief sought by him on one score, namely, that his absence from duty from 5-8-93 to 13-8-93 would be regularised by grant of Earned Leave instead of Extraordinary Leave, and that all other reliefs sought by the Applicant were found to be not tenable and hence were rejected.

They submit that the Applicant had not sought prior permission for his absence on 8-7-93 and 9-7-93 and his absence cannot be treated as on temporary duty. The applicant was bound to obtain prior ~~xxxxx~~ approval of the General Manager to attend the funeral function which he had not done. The Applicant had developed a tendency to take things for granted which obviously was not a healthy trend.

78

It is stated that the Applicant had requested for 55 days leave from 2-11-92 to 26-12-92 as per his note bearing No. 08/0001/70/G/LO/92 dated 10.10.1992. That since the Applicant had already availed 50 days leave till October, 1992, he was initially permitted to avail a month's leave from 27-11-1992 to 26-12-1992. However, the matter relating to grant of leave to the applicant was reviewed by the General Manager in the first week of November, 1992 and he was informed vide letter bearing No. 02/0004/G/Estt dated 2.11.1992 that due to exigencies of services, leave prayed for has been cancelled. Thus non-sanction of leave was intimated to him three ~~xxx~~ weeks in advance. However, the applicant deliberately remained absent from duty from 17-11-92 onwards without obtaining any kind of leave after submitting an unfit medical certificate dated 17-11-92 from the short-term medical officer ~~dm~~ of the factory hospital at Yeddu-mailaram in which he was recommended for absence from duty only for a period of 5 days from 17-11-92 on medical grounds. They also submit that the Applicant was telegraphically informed by the factory to report to Sr. Medical Officer, Incharge, Ordnance Factory Hospital for medical checkup with a view to consider his request for grant of leave on medical grounds. The Applicant did not comply with the said direction and instead obtained a medical certificate from the Chief Medical Officer, Nizam Medical Hospital, Charminar, Hyderabad. Thus the Applicant had produced a medical certificate suppressing the real facts. In the above said medical certificate the Applicant was recommended leave for 40 days from 19-11-92. Later he reported for duty on 27-1-93 after remaining absent from duty for 71 days from 17-11-92 to 26-1-93 and his absence was regularised by grant of commuted leave on medical grounds. Thus the officer had informed that he was sick during the period

R

79

from 17-11-92 to 25-1-93 and he had himself applied for leave. As such his request for regularising this sick period as on duty does not arise. They further submit that during his tenure of stay at ⁰rdnance Factory, the Applicant had availed 249 days leave. That the averment that his services in the factory from August, 1990 to October 1992 were appreciated is not correct. It is submitted that during the sick period the Applicant had not given due attention to his work and mostly he was absent from work. He had not attended regularly the works Committee Meetings and DCF Fourth Leval Council Meeting of which he was the ex-officio Adviser. They have enclosed Annexure R-II detailing the meetings convened and attended by the Applicant.

It is also submitted that the Applicant was transferred to Naval Dock Yard, Bombay in public interest as per orders issued by the Ministry dated 27-7-93 (Annexure R-III) and that the/was accordingly relieved from the factory w.e.f., 14-8-93 and that the Applicant reportedly accepted the transfer and collected Transfer Allowance amounting to Rs. 14,695/- on 16-8-93 for his movements to Bombay. It is submitted that the Applicant was required to report at Bombay on 25-8-93. However, from the communication received from the Respondents Factory dated 5-4-94, the Applicant reported for duty in that unit on 27-1-94 and applied for leave on medical grounds from 15-8-93 to 26-1-94. It is submitted that in order to avoid any financial hardship to the Applicant his absence for the above said period was regularised by grant of leave on medical grounds.

The Applicant had submitted leave application on the ground that he met with an accident while on duty and that the Applicant had not submitted any accident report in the prescribed proforma. Further his sustaining injuries

R

80

was not supported by any medical examination report by the competent Medical Authority, namely, the Medical Officer of Ordnance Factory Hospital or any government or private hospital near the site of accident. Further, a Board of Inquiry was to make necessary enquiries with a view to ascertaining whether the accident had occurred during the course of duty. The Applicant had not furnished these particulars in support of his leave for the said period. Hence, the Chairman rejected his prayer and thus there are no merits in these OA and hence the OA is liable to be dismissed.

It is only as per the directions of this Tribunal in OA, 46 and 47/94 that the Applicant had submitted a representation dated 20-3-95. The Chairman, Ordnance Factory Board considered this request by his letter dated 9-8-95 (page 9 of the OA). From the material placed on record by the Respondent, it is clear that the Applicant was in the habit of availing leave even without sanction.

An employee cannot proceed on leave without obtaining sanction of leave. Further the leave cannot be claimed as a matter of right. The employer or the leave sanctioning authority can sanction or refuse to sanction leave taking into consideration the exigencies of the work. The Applicant was a Sr. Labour Officer. He must have known his duties and responsibilities. He must be present in the factory premises to avoid any labour unrest. From the material placed on record it is disclosed that during the period from 20-9-1990 to 14-8-1993 the Applicant had availed leave of absence of 249 days. This clearly reflects on the conduct of the Applicant who was in the habit of availing leave on medical/grounds. However, the authorities have considered the claims of the Applicant sympathetically and according to rules.

Pr

81

In the case of P.K. Biswas Vs Union of India and another reported in 1987 (Administrative Tribunal cases 505), the Cuttack Bench of this Tribunal has in para 4 stated as follows :

"We have heard Mr Sanjit Mohanty, learned counsel for the petitioner and Mr S.C. Roy, learned standing Counsel for the Income Tax Department. We have also perused the relevant records and therefrom we found that even though the Chief District Medical Officer, Balasore certified on 31-8-1979 that the petitioner was fit to resume his work, yet he did not think it worthwhile to carry out the orders of transfer passed by the competent authority. In no circumstance we could ever appreciate this attitude or act of the petitioner. That apart, granting of leave or refusing to grant leave completely lies within the discretion of the competent authority. Leave cannot be claimed as a matter of right. This was rightly not disputed at the Bar. For so many justifiable reasons, the competent authority may think it unnecessary to grant leave to a particular employee and unless the impugned order appears to be an ~~excessive~~ arbitrary one, we are of the opinion that interfering with the discretion of the competent authority in matters of this nature may amount to exercising excess of jurisdiction and therefore we would refrain ourselves from giving any direction to the competent authority to grant leave to the petitioner."

Further in the case of Chacko Pillai Vs UOI and others reported in 1992 (19 Administrative Tribunal cases) (page 596), the Ernakulam Bench of this Tribunal considered Rules 7 and 14 of Central Civil Services (Leave) Rules, 1972

862

observed in para 6 as follows :

" A Government servant is not entitled to leave as of right. Under Rule-7 of CCS (Leave) Rules, 1972, the competent authority has discretion to refuse leave of any kind. Rule 14 says that a leave application for extension shall be in Form I, which provides a column to be filled by the Government servant for giving details of his address which can be contacted during leave period. Further it is obligatory on the part of the Government employee who applies for leave to find out whether it is in proper form and the same has been granted by the competent authority. If it is not in form, he has the further duty to be present in the office for work in order to avoid break in service. Since the applicant did not discharge any of these obligations, Annexure R-3(6) and (7) orders have been passed. One of the orders reads as follows :

"Whereas Shri C.K. Chacko Pillai, JE was absent from duty from 10-8-1981 to 26-7-1982 without prior permission from the competent authority and whereas he has failed to satisfy the competent authority about the necessity of such absence without permission.

Now, therefore, it is hereby ordered that the said period viz., 10-8-1981 to 26-7-1982 be treated as 'dies non' with break in service.

This is without prejudice to any other disciplinary action that may be taken for his unauthorised absence. ""

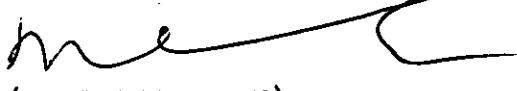
The Respondent authorities have considered the representation dated 20-3-1995 of the Applicant according to rules. We find no illegality in their refusing to

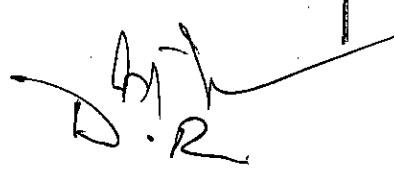
R

accede to certain reliefs claimed by the Applicant. 83

We find no merits in this OA. Hence, the OA is dismissed, leaving the parties to bear their own costs.


(B.S. JAI PARAMESHWAR)
MEMBER (J)
22-4-1998


(R. RANGARAJAN)
MEMBER (A)

DATED : 22-4-1998 

...js/-