

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No. 280 of 1996

DATE OF DECISION : 25-09-96.

SYED ABID ALI

.. Applicant.

Vs.

1. The Govt. of India, Rep. by its Secretary, Min. of Communications, Dept. of Telecommunication, New Delhi.
2. The Assistant Director General (CW), Dept. of Telecommunications, Sanchar Bhavan, 20 Ashoka Road, New Delhi.
3. The Chief General Manager, Telecom, A.P. Circle, Hyderabad.
4. The Superintending Engineer, Telecom, Civil Circle, Chikkadapally, Hyderabad, .. Respondents.

Counsel for the Applicant : Mr. K. Venkateswara Rao

Counsel for the Respondents : Mr. N.V. Raghava Reddy,
Addl. CGSC.

CORAM:-

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



ORDER

ORAL ORDER (AS PER HON'BLE SHRI R. RANGARAJAN:MEMBER(ADMN.))

Heard Mr.K.Venkateswara Rao, learned counsel for the applicant and Mr.N.V.Raghava Reddy, learned counsel for the respondents.

2. The applicant while working as Draughtsman Grade-II under R-4 applied for casual leave from 17-1-79 to 20-01-79 on account of sickness and family circumstances. Later he converted the leave from 17-1-79 to 20-1-79 as EL without M.C. and from 21-1-79 to 30-1-79 with medical certificate. It is stated that the applicant has been paid leave salary for the period from 17-1-79 to 30-1-79 granting him the leave for that period as due to him. However, the applicant extended his leave from 1-2-79 without any application for leave nor producing any medical certificate. He resumed on 15-5-84 and on that date he produced medical certificate for the periods from 1-8-79 to 13-5-84 and fitness certificate dated 14-5-84. There was no medical certificate submitted by him for the period from 1-2-79 to 31-7-79 even at the time of his joining on 15-5-84. He joined on 15-5-84.

3. The applicant was proceeded against by issuing a chargesheet under Rule 14 of the CCS(CCA) Rule of 1965 for ~~an unauthorised absence and enquiry conducted~~ as per rule. He was imposed a penalty of with-holding increment for 2 years w.e.f. 1-8-87 without cumulative effect by the order No.EA/SEHD/Vig-12/127 dated 4/5-8-87. It is stated that the applicant thereafter made several representations for treating the period of absence as leave to which he is entitled. The respondents there upon issued letter No.21-1/89-CSE dated 29-8-89 conveying the ~~approval~~ of the competent authority for regularising the absence of the applicant from 1-2-79 to 13-5-84 as dies non(Annexure-III)

at page-10). R-4 also by his letter No.15(11)/SEHD/94/601 dated -8-84 (Annexure-IV at page-11) had recommended to R-2 for condoning the dies non period and treat it as leave due to him including extra-ordinary leave. But that recommendations was rejected.

4. Aggrieved by the above, he filed OA.No.142/95 on the file of this Bench. That OA was disposed of on 28-8-95 directing R-2 in that OA to reconsider the case of the applicant in regard to treatment of the period as dies non and pass appropriate orders. R-2 had reconsidered the issue and passed the impugned order No.21-1/94-CSE dated 31-10-95 (Annexure-I at Page-7) confirming the earlier orders of treating the period of absence of the applicant from 1-2-79 to 13-5-84 as dies non; but it was ordered in the impugned order that the period from 1-2-79 to 13-5-84 shall not have the effect of break in service and forfeiture of his past service.

5. This OA is filed for setting aside the impugned order No.21-1/94-CSE dated 31-10-95 (Annexure-I) so far it relates to the period of absence as dies non by holding it as discriminatory, illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and for a consequential direction to treat the overstyal period from 1-2-79 to 13-5-84 as leave to which he is entitled including leave not due on medical ground.

6. The main contention of the applicant in this OA is that in terms of Rule 25 of FRSR Part-III of Swamy's Compilation the period of absence after the end of leave should be debited to the leave account of the applicant for which he is eligible including extraordinary leave. This particular Rule 25 of FRSR reads as follows:-

"(1) Unless the authority competent to grant leave extends the leave, a Government servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were half pay leave, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.
(Emphasis added)

(6)

(2) Wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action".

Sub-para 2 of Rule 25 states that wilful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action. On the basis of that rule the applicant had already been charge sheeted and penalty has been imposed. The learned counsel for the applicant submitted that in view of the fact that the penalty has already been imposed on him for his absence, the sub-rule (1) of Rule 25 is applicable to him and the period of absence after the expiry of the leave period upto 31-1-79 i.e., starting from 1-2-79 to 13-5-84 should be treated as leave due to him including extraordinary leave. This period cannot be treated as dies non. When questioned whether the extraordinary leave if granted will give him the relief of counting the extraordinary leave period for purpose of qualifying service, the learned counsel for the applicant submitted that the extraordinary leave with medical certificate will enable the applicant to count that period for purpose of qualifying service in terms of Rule 21 of CCS (Pension) Rules.

7. Rule 21 of CCS (Pension) Rules reads as follows:-

"Counting of periods spent on leave

All leave during service for which leave salary is payable (and all extraordinary leave granted on medical certificate) shall count as qualifying service:

Provided that in the case of extraordinary leave (other than extraordinary leave granted on medical certificate) the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant-

(i) Omitted.

(ii) due to his inability to join or rejoin duty on account of civil commotion; or

(iii) for prosecuting higher scientific and technical studies.

The relevant GOVERNMENT OF INDIA'S DECISIONS under this rule reads as below:-

(1) Need for making proper entries for treatment of extraordinary leave for pensionary benefits:- Under Rule 21 of the CCS (Pension) Rules, 1972, extraordinary leave granted

on medical certificate qualifies for pension. The appointing authority may, at the time of granting extraordinary leave, also allow the period of such leave to count as qualifying for pension if the leave is granted to a Government servant-

- (i) due to his inability to join or rejoin duty on account of civil commotion, or
- (ii) for prosecuting higher technical and scientific studies.

Extraordinary leave taken on other grounds is treated as non-qualifying and, therefore, a definite entry is to be made in the service records to that effect. Entries regarding service being qualifying or otherwise are required to be made simultaneously with the event. Even where this is not done, it should still be possible to rectify the omission during the period allowed for preparatory action, i.e., from two years in advance of the retirement date upto eight months before retirement. At the end of that period, however (i.e., when the actual preparation of the pension papers is taken in hand), no further enquiry into past events or check of past records should be undertaken. Specific entries in the service records regarding non-qualifying periods will be taken note of and such periods excluded from the service. All spells of extraordinary leave not covered by such specific entries will be deemed to be qualifying service.

(G.I., M.F., O.M.F.11(3).V(A)/76, dated the 28th February, 1976-paragraph 3(a).)

The applicant now submits that as he was on sick list and produced the medical certificate on 15-5-84 at the time of joining back into service he is entitled for treating the period of absence from 1-2-79 to 13-5-84 as extraordinary leave on medical certificate and on that basis that period should be counted for the purpose of qualifying service for pensionary benefits. The applicant further submits that in view of Rule 25 of FRSR and Rule 21 of CCS (Pension) Rule, the respondents cannot decide the absence period from 1-2-79 to 13-5-84 in any other manner except granting him extraordinary leave treating that period as qualifying service for purpose of pensionary benefits.

8. The learned counsel for the respondents submitted that in terms of Rule 12 of FRSR no Government servant can be granted leave of any kind for a continuous period exceeding five years unless such a leave is sanctioned by the President in view of the exceptional circumstances of the case. The learned standing counsel further submitted that as the absence of the applicant in this case was over five years

no leave can be sanctioned by any other authority. But it was pointed out that the period of absence was treated as dies non by the competent authority in the DOT who can exercise the powers on behalf of the President. In view of the above, no further consideration on this point is necessary.

9. It is seen from the para-6 (c) of the OA that the applicant had submitted a medical certificate for the period from 1-8-79 to 13-5-84. For the earlier period from 1-2-79 to 31-7-79 there is no medical certificate to cover that period. From Rule 25 of the FRSR it can be reasonably presumed that the applicant is eligible to get the leave period under medical certificate counted for qualifying service only if he submits medical certificate for the period immediately after the expiry of the sanctioned leave. As stated above, the medical certificate was not produced for the period from 1-2-79 to 31-7-79 and the medical certificate for the rest of the period from 1-8-79 to 13-5-84 was produced only on 13-5-84. Hence there is a gap for production of medical certificate for granting of leave after the expiry of the sanctioned leave. Hence, it is a debatable point whether the counting of the leave period for qualifying service is applicable in the case of the applicant in view of the circumstances quoted above. Even presuming that the above rule is applicable he should have produced the medical certificate immediately after the expiry of the sanctioned leave period before availing the leave in continuation of the sanctioned leave. If such certificate is not produced in time before availing the leave for the period beyond the sanctioned leave period he may not get the benefit as per Rule 25 of FRSR. In the present case the applicant submitted the medical certificate only on 15-5-84 after lapse of 5 years from the date after the expiry of the sanctioned leave. This is a belated medical certificate and such belated

certificate cannot be treated as equivalent to the medical certificate submitted in time before availing the leave i.e., in this case before availing the leave from 1-2-79. Hence it cannot be said that the applicant has fully followed the rules in this connection. In this view also I find that the applicant may not be eligible for the benefits as mentioned in Rule 25 of FRSR.

10. The learned counsel for the applicant submitted that the authority has no power to treat this period as dies non in view of the Rule 25 of FRSR and it can only be treated as extraordinary leave. As stated earlier the extraordinary leave will count as qualifying service only if medical certificate is produced. In the absence of the medical certificate mere sanction of the extraordinary leave will not enable the applicant to count that period of extraordinary leave for purpose of qualifying service. Hence, even presuming that the period from 1-2-79 to 13-5-84 is to be treated as extraordinary leave instead of dies non the applicant will not be eligible for counting that period as qualifying service for reason stated in para supra. Mere technical objection as above by the applicant in this case will not help the applicant. Hence, I do not see any useful purpose will be served if the impugned order is set aside in so far it treats the period as dies non and remitting it back to the respondents to issue the orders on the basis of Rule 25 of FRSR. Hence, this contention of the applicant also may not be sustainable.

11. No other contention has been raised in this OA. The respondents also have no other contentions to put forward.

12. The only other point to be considered in this OA is whether any leniency should be shown in the case of the applicant as he had already retired from service after putting in a service of 30 years. But even in this 30 years 5 years have been deducted because of his absence from 1-2-79 to 13-5-84 and hence the qualifying service has been reduced

to about 25 years. This in my opinion will cause a hardship to a retired employee who has put in considerable service in the department. His unauthorised absence which was treated as dies-non appears to be due to circumstances beyond his control. Though the applicant did not follow rules some sympathy may be shown to him in view of his long service. Loosing 5 years of qualifying service for purpose of fixation of pension will be harsh on the applicant. Hence, showing some consideration, will not be out of place in the present circumstances of the case. It is stated that the applicant ~~encashable~~ has some leave as on 31-1-79. That quantum of leave available to him on 31-1-79 may be counted for his qualifying service in accordance with rules for fixation of pension and other pensionary benefits. This concession in my opinion is to be granted as a matter of reward to the applicant for his long reported faithful service even though he has not followed the leave rules as stated above.

13. In the facts and circumstances of the case the following direction is given:-

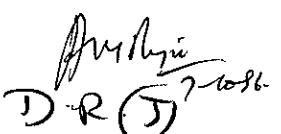
The applicant is not entitled for counting the full period from 1-2-79 to 13-5-84 as qualifying service for purpose of payment of pension and other pensionary benefits. ~~encashable~~ But the leave in his credit as on 31-1-79 should be granted to him in accordance with rules and to that extent the qualifying service should be enhanced for purposes of grant of pension and other pensionary benefits.

14. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)
MEMBER(ADMN.)

Dated : The 25th September 1996.
(Dictated in Open Court)

SPR


DR (J) 7-10-96