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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.
O.A.No.438/98

Date of order: 17/5/2000

Kanhaiya Lal, S/o Shri Hayan Lal, R/o Near Rly. Station,
working as Sorting Assistant, O/o RMS, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt. of India,
Deptt. of Posts, Dak Bhawan, Sansad Marg, New Delhi.
 2. Chief Post Master General Rajasthan Circle, Jaipur.
 3. Sr.Superintendent, Railway Mail Service, JP Dn, Jaipur.
- ...Respondent.

Mr.P.N.Jati - Counsel for the petitioner.

Mr.N.C.Goyal - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this original application under Sec.19 of the Administrative Tribunals Act, 1985, applicant makes a prayer to quash and set aside the impugned order dated 7.10.97 (Annx.A2) and direct the respondents to grant leave to the applicant w.e.f. 21.5.96 to 17.6.96.

2. In brief facts of the case as stated by the applicant are that while working on Group-D post in the department of Posts, the father of the applicant expired on 21.5.96 and intimation to this effect was given to the department. Thereafter on completion of death ceremonies the applicant resumed duties 17.6.96 afternoon. The applicant submitted an application alongwith all documents for sanction of leave for the aforesaid period but instead of sanctioning leave the S.R.M.(Stg.) issued the impugned order dated 7.10.97 treating the period as dies non. It is stated that the action of the respondents was arbitrary and illegal. The applicant also submitted his representation to the Sr.Superintendent, RMS, Jaipur, but no action was taken, therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that leave can be granted to a Govt servant as per the provisions given in the CCS(Leave) Rules, 1972 and the applicant remained absent without prior information as required under the said rules of 1972. Therefore, such period of absence has been treated as dies non. It is also stated that the applicant did not submit any leave application in time and remained absent from 21.5.96 to 17.6.96 and he only submitted an application

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on 17.6.96 when he resumed duties. Therefore, this O.A is not maintainable in law and the order passed by the respondents was in accordance with the rules. Therefore, the O.A is devoid of any merit is liable to be dismissed.

4. Rejoinder was also filed reiterating the facts stated in the O.A.

5. Heard the learned counsel for the parties and also perused the whole record.

6. On a perusal of death certificate, it appears that Shri Hajarimal Verma, S/o Shri Mahadev Verma, F-97, Panchsheel Marg, C-Scheme, Jaipur, died on 21.5.96, who is the father of the applicant Shri Kanhiya Lal. It is also undisputed that the applicant filed an application for sanction of commuted leave w.e.f. 21.5.96 to 17.6.96 on 17.6.97 on the ground of his father's death. No disciplinary proceedings were initiated against the applicant on account of unauthorised/wilful absence. No opportunity of hearing/show cause was given to the applicant before issuing the impugned order dated 7.10.97. The applicant has stated that he informed the departmental authorities regarding the death of his father and to remain on leave although it is denied by the respondents. But the fact that father of the applicant expired on 21.5.96 is not disputed by the respondents.

7. Rule 62 of Vol.III of P&T Manual is reproduced as under:
"Absence without permission - Absence of official from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the 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 be treated as dies-non."


8. On a perusal of the rules it is made clear that in case of absence from duty without proper permission gives right to the leave sanctioning authority to treat such period as dies-non. But it is expected that the leave sanctioning authority should exercise this power judiciously and not arbitrarily. There was no basis before the leave sanctioning authority to arrive at a conclusion that the absence of the applicant from duty was wilful or deliberate as the applicant himself has specifically mentioned in the leave application that his father expired on 21.5.96 and due to this reason he could not attend the office w.e.f. 21.5.96 to 17.6.96. The certificate

of death has also been produced and the leave sanctioning authority never disputed the factum of death of the father of the applicant. Therefore, on account of the death of the father of an employee, the leave sanctioning authority is not expected to reject such application for leave and to treat that period as dies non. Before passing such a harsh and punitive order, it was incumbent upon the leave sanctioning authority to give a proper opportunity of hearing to the delinquent or should have made a preliminary enquiry to reach the conclusion that the employee was absented from duty without proper permission.

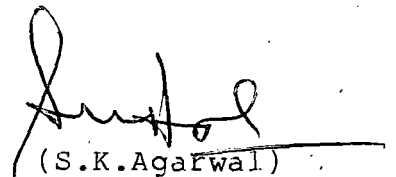
8. In the instant case, the leave sanctioning authority never cared to observe the principles of natural justice as well as the power/authority which vested upon him was not exercised judiciously but it appears to have been exercised arbitrarily. It is pertinent to mention that the applicant filed representation to the Sr. Superintendent, RMS, Jaipur on 19.1.98 but the same has not been replied. Therefore, in our considered opinion that the impugned order dated 7.10.97 is not sustainable in law and liable to be quashed and the applicant is entitled to sanction of leave admissible to him for the period 21.5.96 to 17.6.96.

9. We, therefore, allow the O.A and quash the order dated 7.10.97 (Annx.A2) and direct the respondents to sanction leave as admissible to the applicant for the period 21.5.96 to 17.6.96. The whole exercise must be done within a period of two months from the date of receipt of a copy of this order.

10. No order as to costs.



(N.P. Nawari)
Member (A).



(S.K. Agarwal)
Member (J).