

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 07.01.2004

OA No.273/2002

Habibuddin Khan s/o Janab Mehboob Khan r/o 3920, Habib House, Jhulewalon Ki Gali, Top Khana Dosh, Jaipur-I, presently working as P.A.HSG-II in Rajasthan Secretariat Post Office, Jaipur.

.. Applicant

VERSUS

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Office, Jaipur City Dn. Jaipur.

.. Respondents

Mr.P.N.Jatti - counsel for the applicant.

Mr. Tej Prakash Sharma - counsel for the respondents

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Bhandari, Member (Administrative)

ORDER (ORAL)

Earlier, the applicant has filed this OA against the impugned order dated 16.3.2001 (Ann.A1) whereby the period w.e.f. 5.12.2000 to 18.12.2000 was ordered to be treated as dies-non. He has also made representation against the impugned order, though belatedly, and during the pendency of this OA, the representation of the applicant was rejected vide order dated 25.9.02 (Ann.A/1A). The applicant moved an application for amendment thereby challenging this order also, which was

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subsequently allowed by this Tribunal. In the amended OA, the applicant has impugned both these orders (Ann.A1 and Ann.A/1A). In relief, he has prayed that these orders may kindly be quashed and set-aside and the respondents be directed to sanction leave from 5.12.2000 to 18.12.2000 and to draw salary of the said period.

2. Facts of the case are that the applicant while working as Sorting Assistant (BCR) in the Department of Posts, Jaipur (Rajasthan) proceeded on leave w.e.f. 5.12.2000 to 18.12.2000. The case of the applicant is that he was not feeling well from last some days and his Ayurvedic treatment was going on in the Govt. Hospital. It is further averred that he fell ill on 5.12.2000 and therefore, the applicant took treatment from National Ayurved Institute, Jaipur w.e.f. 5.12.2000 to 18.12.2000. The applicant submitted a medical certificate and requested the authorities to sanction leave on the basis of medical certificate, but the respondent No.3 instead of sanctioning leave, issued the order for dies-non.

2.1 It is further stated that the applicant submitted a representation dated 2.4.2001, but no action has been taken by the respondents till filing of the OA. However, subsequently vide impugned order dated 25.9.02 the representation of the applicant was decided and the order passed by the Senior Superintendent of Post Offices, Jaipur City Division, Jaipur was confirmed by the same authority. It is further stated that in the impugned order dated 16.3.2001 (Ann.A1) reference to Rule 152 of Postal Manual Vol.III has been made and it has been stated that the medical certificate should have been presented by the applicant on the same day in order to regularise the

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period of absence. It is further stated that the certificate of sickness was in fact sent to the office of respondents by hand by two sons namely Nafij Ahmed and Afij Ahmed but the Superintendent, Shri Shanker Lal, told that as there is strike, no employee is there on duty, therefore, the certificate will be accepted later on. The applicant has also filed affidavit of Hafij Ahmed to this effect. It is on the basis of the aforesaid factual matrix that the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply to the original as well as amended OA. In the reply, it has been stated that the applicant remained absent from duty from 5.12.2000 to 18.12.2000 for participating in the strike of postal employees. However, on joining after call off the strike, the applicant resumed at Rajasthan Secretariat Post Office on 19.12.2000 by producing medical sickness certificates dated 5.12.2000 and 18.12.2000 alongwith medical fitness certificate dated 19.12.2000. It is also stated that the applicant remained unauthorisedly absent from duty from 5.12.2000 to 18.12.2000 without information to the competent authority and without sanctioning of leave by the authority. It is further stated that submission of medical certificate alongwith fitness certificate at the time of joining at Rajasthan Secretariat Post Office on 19.12.2000 is in contravention of Rule 162 of the Postal Manual Vol.III. Thus, the period of unauthorised absence is treated as dies-non as per rules. The respondents have also placed on record copy of the medical certificate dated 5.12.2000, 18.12.2000 and

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medical certificate of fitness to return to duty dated 19.12.2000 on record as Anns.R1,R2 and R3. The respondents have further stated that the representation of the applicant dated 2.4.01 was addressed to respondent No.3 who has passed the original order whereas it should have been addressed to the next higher authority, as such no action was warranted at the level of respondent No.3. However, the case of the applicant was again reviewed on receipt of the letter dated 17.8.01 from respondent No.2 and accordingly a show-cause notice dated 15.4.2000 was issued to the applicant for submission of the representation against the proposed action of treating the period as dies-non, but no representation has been received from the applicant. Hence his case was again decided by the Senior Superintendent of Post Office, Jaipur Region, Jaipur City, Jaipur vide order dated 25.9.2002 and the period from 5.12.2000 to 18.12.2000 was treated as dies-non.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The question which requires our consideration is whether the period of absence from 5.12.2000 to 18.12.2000 can be treated as dies-non in view of Rule 162 of the Postal Manual Vol.III solely on the ground that the applicant has not submitted the certificate of sickness on the same day.

4.2 At the outset, it may be submitted that the impugned order dated 16.3.01 (Ann.A1) and subsequent order dated 25.9.02 (Ann.A/1A) has been passed by the same authority i.e. respondent No.3. In the order dated 16.3.2001 the ground taken for treating the period as

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dies-non is not furnishing of medical certificate of sickness on the same day and also that the applicant remained unauthorisedly absent for the period w.e.f. 5.12.2000 to 18.12.2000 for participating in the postal employees strike. Admittedly, the period of absence was treated as dies-non without any show-cause notice to the applicant, which was mandatory requirement. Since the postal authorities were ceased of the matter regarding the matter pertaining to the postal strike, instructions were issued by the Chief Postmaster General, Rajasthan Circle, Jaipur vide letter dated 17.8.2001 to the effect that official who have remained absent were required to be given an opportunity before treating the period as dies non and for that purpose 10 days time <sup>may be</sup> given to them. In compliance of the aforesaid instructions, the respondent No.3 issued a show-cause notice dated 15.4.2002 to the applicant thereby giving him opportunity to file reply to the said show-cause notice within 10 days and in case no reply is received within the stipulated time, the case will be decided ex-parte. To us, such a course was not permissible for respondent No.3. Respondent No.3 has no authority to review its own order which has been passed on earlier occasion, contrary to rules and without giving opportunity to the applicant, before treating the period in question as dies-non. Before adopting such a course, it was incumbent upon the higher authority to supersede the earlier order dated 16.3.2001 and remanded the case back to the authority who has passed the original order i.e. respondent No.3 to reconsider the case afresh after giving show-cause notice to the applicant to make representation and pass fresh order. Admittedly, no such course has been adopted in this case.

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4.3 As can be seen from the material placed on record, there are two orders passed by the same authority i.e. order dated 16.3.2001 (Ann.A1) and subsequent order dated 25.9.02 (Ann.A/1A) where the period of unauthorised absence from duty w.e.f. 5.12.2000 to 18.12.2000 has been treated as dies-non by giving different reasons. In the earlier order dated 16.3.2001 the reason for treating the period as dies-non given is non-submission of medical certificate on the same day which was required as per Rule 162 of the Postal Manual Vol.III whereas reason given by respondent No.3 while passing the order dated 25.9.2002 is quite different and for that purpose the representation made by the applicant has been taken into consideration and this order has been passed as if the respondent No.3 was exercising the appellate powers while dealing with the representation of the applicant against the order passed by respondent No.3 himself. As already stated above, such a course was not permissible for respondent No.3. Respondent No.3 cannot act as original authority while treating the period as dies-non and subsequently on the basis of the representation made by the applicant cannot pass a fresh order exercising powers of the appellate authority. On this short ground, the applicant is entitled for the relief.

4.4 That apart, this Tribunal in OA No.508/2002-Ehambhu Ram vs. UOI decided on 10.9.2003 and OA No. 249/2003 - L.L.Agrawal vs.UOI decided on 12.09.2003 while interpreting Rule 162 of the Postal Manual Vol.III and also relying upon the Govt. of India instructions issued vide DG, P&T letter dated 5th October, 1975 which deals with the action for unauthorised absence from duty or overstaya and prescribes procedure as to under what

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circumstances the period can be treated as dies-non, has held that Rule 162 nowhere states that the period will be treated as dies-non in case the medical certificate is not produced within the prescribed time. It is production of the certificate which has been made mandatory failing which the Government servant shall not be entitled for pay and allowances and this period has to be treated as leave without pay under Rule 162. In the instant case, the applicant has submitted medical certificate. In case the respondents were not satisfied about genuineness of the medical certificate, the course available for the respondents is to refer the matter to the medical board, but the respondents have not adopted this procedure. The applicant has produced the certificate and it is in the eventuality of not producing the medical certificate, at the most the period has to be treated as leave without pay and not dies-non. As such the reference made by respondent No.3 of Rule 162 of Postal Manual Vol.III for treating the period as unauthorised absence as dies not is without any basis and Rule 162 does not deal with the circumstances under which the period of unauthorised absence can be treated as dies-non. The period of unauthorised absence from duty or overstayal can be treated as dies-non in terms of DP, P&T letter No.6/28/70-Disc.I (SPB-I) dated 5th October, 1975. Para 1(iii) of the said letter reads as under:-

".....If a Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences, viz. that the entire period of absence would be treated as unauthorized,

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entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If, however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorized resulting in loss in pay and allowances for the period of absence under proviso to FR 17(1) and thus a break in service. The question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard."

4.5 Admittedly, no such procedure has been adopted in the instant case. Neither the applicant has been told about the consequences that the entire period of absence would be treated as unauthorised absence entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service nor any disciplinary proceedings were initiated against the applicant. It is only after conclusion of the disciplinary proceedings the finding whether break in service should be condoned or not and treated as dies non has to be arrived at.

4.6 Viewing from any angle, the action of the respondents in treating the period of absence from 5.12.2000 to 18.12.2000 as dies-non is illegal and without any sanction of law and as such the impugned orders dated

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16.1.2001 and 25.9.2002 (Ann.A1 and Ann.A/1A) deserve to be set-aside. As such, the respondents are directed to regularise the period from 5.12.2000 to 18.12.2000 as commuted leave on medical grounds. The applicant shall also be entitled for salary and allowances for the said period. Such an exercise shall be completed within a period of two months from the date of this order. No order as to costs.

  
(A.F. BHANDARI)

Member (A)

  
(M.L. CHAUHAN)

Member (J)