

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 10.09.2003

OA No.508/2002

Bhambu Ram s/o Shri Devi Sahai r/o PL-66, Koli Colony,
Near Kanwar Nagar, Jaipur, presently retd. as Postal
Assistant, Jaipur General Post Office, Jaipur.

.. Applicant

Versus

1. The Union of India through the Secretary to the Govt. of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Senior Supdt. Post Offices, Jaipur City Dn., Jaipur.

.. Respondents

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

Mr. T.P.Sharma - counsel for the respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN

The applicant has filed the present OA against the impugned orders dated 11.4.2001 (Ann.A7) and 16.4.2002 (Ann.A1) whereby the period from 9.12.2000 to 19.12.2000 was ordered to be treated as dies-non in accordance with Rule 162 of the Postal Manual Vol.III. In relief, he has prayed that these orders may kindly be quashed and set-aside and the respondent No.3 be directed to sanction leave from 9.12.2000 to 19.12.2000 and to draw the pay and allowances for the said period.

14/

2. Facts of the case are that the applicant while working as Postal Assistant, Jaipur City Post Office proceeded on leave w.e.f. 2.12.2000 to 19.12.2000. He assumed duty on 20.12.2000. The case of the applicant is that though he was sanctioned leave from 2.12.2000 to 8.12.2000 but the rest of the period from 9.12.2000 to 19.12.2000 has been treated as dies-non arbitrarily. It has been pleaded that he fell ill on 1.12.2000 in the afternoon and submitted medical certificate w.e.f. 2.12.2000 to 8.12.2000 to the Postmaster, Jaipur City Post Office. Further case of the applicant is that he remained in continuous treatment in the National Institute of Ayurveda, Jorawar Singh Gate, Jaipur and the medical authority advised the applicant not to join duty and take rest. It is further pleaded that there was a postal strike in the Department and all the post offices were closed. He deputed his son to deliver necessary medical certificate to the office of Senior Superintendent Post Offices but the officials in the control room did not take the medical certificate. According to the applicant, the certificate of sickness w.e.f. 9.12.2000 for 7 days was issued by the competent authority. When no leave was sanctioned by the Senior Superintendent of Post Offices upto a long time, the applicant submitted an application dated 8.2.2001 (Ann.A5) thereby requesting that the applicant is facing hardship and as such salary for the month of December, 2000 may be released. When nothing was heard from the respondents, he has filed OA No.98/2001 before this Tribunal and this Tribunal vide order dated 7.3.2001 (Ann.A6) directed the respondents to decide the representation dated 8.2.2001 within a period of one month

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from the date of receipt of the order by a reasoned and speaking order. The said representation was decided by the respondent No.3, Senior Superintendent of Post Offices vide impugned order dated 11.4.2001 (Ann.A7). Vide this order the period w.e.f. 2.12.2000 to 8.12.2000 was sanctioned as commuted leave on medical certificate whereas the period w.e.f. 9.12.2000 to 19.12.2000 was treated as dies-non as per rule 162 of the Postal Manual Vol.III applying 'no work no pay' principle. Against this order (Ann.A7), the applicant submitted a representation dated 27.4.2001 (Ann.A8) to the Director, Postal Services. The said representation was decided vide order dated 31.8.2001 (Ann.A9) and the case was remitted back to the respondent No.3 to decide the matter in the light of the office order 17.8.2001 which stipulates that where the period is to be treated as dies-non, such an order can be passed only after issuing a show-cause notice to the official concerned before passing the order of dies-non. Pursuant to the aforesaid order passed by the Director of Postal, the respondent No.3 has passed a fresh order dated 16.4.2002 (Ann.A1) thereby holding that it was the personal responsibility to submit his medical certificate within the prescribed time, but he failed to do so and submitted his medical certificates dated 9.12.2000 and 16.12.2000 at the time of joining his duty on 20.12.2000 as admitted in para 4 of his representation. Accordingly, absence period w.e.f. 9.12.2000 to 19.12.2000 is ordered to be treated as dies-non in accordance with rule 162 of the Postal Manual, Vol.III. It is against this order that the applicant has filed the present OA for the aforesaid reliefs.

3. The respondents have filed reply. In the reply, it has been stated that the medical certificate dated 2.12.2000 for a period of 7 days was submitted to the respondents at Jaipur City Post Office on 2.12.2000. It was his personal duty to submit sick certificate to the competent authority within the prescribed time limit as required vide rule 162 of the Postal Manual Vol.III. The sickness certificates dated 9.12.2000 and 16.12.2000 covering the period from 9.12.2000 to 19.12.2000 was received on 20.12.2000 with an inordinate delay. As such the period of absence from 9.12.2000 to 19.12.2000 was ordered to be treated as dies-non after taking into consideration the representation dated 25.10.2001 submitted by the official in response to the show-cause notice. Had the applicant followed the rules and submitted the medical certificate in time, he would have been granted the leave accordingly.

4. The applicant has filed rejoinder. It has been reiterated that the intimation of sickness of the applicant was in the office of respondents w.e.f. 2.12.2002, therefore the applicant was entitled to be granted leave on the basis of the medical certificate and the action of respondent No.3 for treating the period w.e.f. 9.12.2000 to 19.12.2000 as dies non is not a correct action and is contrary to the rules.

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

5.1 The question which requires our consideration is whether the period from 9.12.2000 to 19.12.2000 can be treated as dies-non simply because the applicant has

6

submitted medical certificates after a lapse of 10 and 3 days though admittedly prior to 20.12.2000, when he was declared fit by the Doctor. At this stage, it would be appropriate to reproduce the relevant portion of the Government instructions as issued vide DG, P&T's letter No.6/28/70-Disc.I(SPE-I) dated 5th October, 1975 which deals with the action for unauthorised absence from the duty or overstayal. 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, 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."

From the portion as extracted above, it is

68

evident that 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 that the entire period of absence would be treated as unauthorized, entailing loss of pay for the period in question as per the provision to FR 17 thereby resulting in break in service. The instructions further stipulates that in case the employee reports for duty, he may be taken back for duty because he has not been placed under suspension and disciplinary action should be initiated against the defaulting Govt. official and the period of absence may be treated as unauthorised resulting in loss in pay and allowances for the period of absence under proviso to FR 17 (1) which may result in break in service. The question whether break should be condoned or not should be considered after consideration of the disciplinary proceedings and after the Govt. servant represents in this regard. Admittedly, in this case no such procedure was followed by the respondents. Pather, on the facts as stated above, it is apparent that the applicant who fell ill on 1.12.2000 afternoon proceeded on medical leave w.e.f. 2.12.2000. In that behalf he at the first instant submitted medical certificate from 2.12.2000 to 8.12.2000 and this period from 2.12.2000 to 8.12.2000 was regularised as commuted leave on medical certificate. However, the period w.e.f. 9.12.2000 to 19.12.2000 was treated as dies-non simply on the ground that the medical certificate was submitted by the applicant after a considerable delay. Even if the version of the applicant that he submitted the medical certificate on 9.12.2000 through his son to be presented in the office of

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Superintendent of Post Offices, but the officials who were performing the duty in the control room did not take the certificate as there was strike during the relevant period is ignored, the fact remains that the applicant resumed his duty on 20.12.2000 and even as per the version of the respondents, the medical certificate dated 9.12.2000 and 16.12.2000 were submitted in the City Post Office on 19.12.2000 late by 10 and 3 days, this cannot be a ground for treating the period of absence from 9.12.2000 to 19.12.2000 as dies-non in view of the provisions quoted above. The fact also remains that the applicant was ill and he was on medical leave continuously w.e.f. 2.12.2000 to 19.12.2000. He had submitted a medical certificate for 7 days immediately on 2.12.2000 on the same date and this period was regularised by the respondents. It is not the case of the respondents that the medical certificate issued on 9.12.2000 and 16.12.2000 as submitted on 19.12.2000 are not genuine medical certificates, whereas the respondents have accepted that the applicant was ill and sanctioned leave for first 7 days. It cannot be said that the remaining absence of the applicant w.e.f. 9.12.2000 to 19.12.2000 are unauthorised absence from duty or overstyal of leave. As such the action of the respondents is illegal and without any validity of law and as such the impugned order Ann.Al deserves to be quashed and set-aside.

5.2 Now let us also examine the case of the applicant in the light of Rule 162 of the Postal Manual Vol.III on which emphasis has been laid by the respondents for treating the period from 9.12.2000 to 19.12.2000 as dies-non. Extract of Rule 162 of the Postal Manual Vol.III has

4

been annexed as Ann. A12 of this QA which reads as under:-

"162. Permission to avail of casual or/other leave should be taken in advance unless there are compelling reasons of medical or other urgent nature. An applicant for leave is not allowed to avail himself of it or to quit his office or his station until the leave is sanctioned and he has formally made over charge to the officer appointed to relieve him. In cases where the absence of an official is due to compelling reasons, he should send immediate intimation to the head of his office by the quickest possible means and if the intimation has to be posted, it must be posted the same day. He should also satisfy the head of the office as to the necessity of not taking permission to absent himself from office in advance. In cases of severe illness where leave is required for medical reasons and the official is not able to attend to his duties, he should send the medical certificate in accordance with the procedure laid down in Rule 229 of the SRs of the F&T Compilation of the FRs and SRs alongwith the first intimation or later on during the course of that day. The medical certificate should also definitely mention that date from which the applicant is unwell and unable to attend to his duties. Failing the production of such a certificate no pay can be granted to the applicant and he will be liable to be granted leave without pay...."

This rule nowhere states that the period will be

treated as dies-non in case the medical certificate is not produced within the prescribed time. What the rule stipulates is that casual or other leave should be taken in advance unless there are compelling reasons of medical or other urgent nature. In the case of absence of an official due to compelling reasons, he should send immediate intimation to the head of his office by the quickest possible means and if the intimation has to be posted, it must be posted the same day. He should also satisfy the head of the office as to the necessity of not taking permission to absent himself from office in advance. In cases of severe illness where leave is required for medical reasons and the official is not able to attend to his duties, he should send the medical certificate in accordance with the procedure laid down in Rule 229 of the SFs of the P&T Compilation of the FRs and SRs alongwith the first intimation or later on during the course of that day. The medical certificate should also definitely mention the date from which the applicant is unwell and unable to attend to his duties. Failing the production of such a certificate no pay can be granted to the applicant and he will be liable to be granted leave without pay. Thus, this ^{rule} nowhere states that if there is a delay in submission of the medical certificate, the period has to be treated as dies-non. For the sake of repetition, it must be stated that what the rules stipulates is that official concerned should sent immediate intimation to the head of office regarding his sickness on the same day. By submitting a sickness certificate of 7 days on 2.12.2000 the authority being satisfied about the genuineness of the illness of the applicant and sanctioned the leave of 7 days. It is not the case of the respondents that the

4

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medical certificates which were submitted by the applicant for the period from 9.12.2000 to 19.12.2000 do not indicate the date from which the applicant is unable to attend duty. It is also not their case that the applicant has failed to produce the medical certificate and as such no pay can be granted to him in terms of the aforesaid rule. Therefore, the respondents have wrongfully applied rule 162 in the case of the applicant while treating the period from 9.12.2000 to 19.12.2000 as dies-non and as such the action of the respondents while treating the said period as dies non cannot be legally sustained.

6. In view of what has been stated above, the impugned order 16.4.2002 (Ann.A1) is hereby quashed and set-aside. The respondents are directed to regularise the period from 9.12.2000 to 19.12.2000 as period spent on commuted leave on medical certificate. The applicant shall also be entitled for salary and allowances for the aforesaid period. Such an exercise shall be completed by the respondents within a period of two months from today.

7. The OA is disposed of accordingly with no order as to costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)