

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 12.09.2003

OA No.249/2003

L.L.Agrawal s/o Shri Jagannath Prasad Agarwal r/o House No. 1204, Phejron Ka Pasta, Chandpole Bazar, Jaipur-1, presentl working as S.A.(BCE) O/o Railway Mail Service, Jaipur Dn. 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. Railway Mail Service, Opp. Radio Station, Mirja Ismail Road, Jaipur.
4. Supdt. Stg. Railway Mail Service, Jaipur-6.

.. Respondents

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

Mr.N.C.Goyal alongwith Ms. Rajeshwari, counsel for the respondents.

CORAM:

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

HON'BLE MR. A.F.EHANDAFI, MEMBER (ADMINISTRATIVE)

O R D E R (ORAL)

The applicant has filed the present OA against the impugned orders dated 16.12.02 (Ann.A2) and 11.4.2003 (Ann.A1) whereby the period from 30.7.02 to 18.8.2002 and subsequently modified ^{To w/} 30.7.02 to 8.8.2002 has been treated as dies-non. In relief, he has prayed that the impugned orders dated 11.4.03 and 16.12.02 (Ann.A1 and A2) be quashed and set-aside and further the

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respondents be directed to sanction the medical leave on the basis of the medical certification issued by a Govt. Doctor to whom the case was referred by the P&T Dispensary, Jaipur.

1.1 Since the order Ann.A2 dated 16.12.02 has been modified on appeal vide order dated 11.4.03 (Ann.A1), as such in substance it is the order Ann.A1 against which the applicant can be said to be aggrieved and requires our consideration.

2. Facts of the case are that the applicant while working as Sorting Assistant, HRO RS Branch, Jaipur absented himself from duty w.e.f. 30.7.02 to 18.8.02 as according to the applicant, he is a chronic patient of Asthama and on the recommendation of the P&T Dispensary, his case was referred to the SMS Hospital where the specialist of Asthama Dr. Virendra Singh treated him. The applicant submitted a medical certificate on 9.8.02 to HRO, R.S.Branch, Jaipur stating the reason that the medical certificate was issued on 8.8.02 for the said period i.e. from 30.7.02 to 18.8.02 and the same was submitted to the respondents to sanction medical leave. On receipt of the medical certificate issued on 8.8.02, a show cause notice was issued to the applicant by the Superintendent (Sorting), Jaipur RMS, Jaipur vide his letter No.B.2/L/LL Agrawal dated 24.8.02, copy of which has been annexed by the respondents with their reply as Ann.F1. Pursuant to the said show-cause notice, reply was submitted by the applicant thereby stating the the Doctor has issued the medical certificate on 8.8.02 and the same was submitted on 9.8.03. Being not satisfied with the explanation given by the applicant, the postal authorities

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took up the matter with the Doctor who issued the said certificate, vide letter dated 26.9.02 followed by reminder dated 26.10.02. Dr. Virendra Singh who treated the applicant replied on 28.10.02 thereby informing that the patient was not having the proforma of medical certificate on the day of first consultation i.e. on 30.7.02. The applicant brought the proforma of medical certificate on the day of next consultation i.e. on 8.8.02 and hence the medical certificate was issued on 8.8.02. Copy of this letter has been placed on record by the respondents as Ann.P4. After receiving the reply of Dr. Virendra Singh, and also considering the reply to the show-cause notice given by the applicant, the Superintendent, Jaipur FMS, Jaipur found that the reply is not convincing and accordingly vide the impugned order dated 16.12.02 (Ann.A2) the entire period of 20 days i.e. 30.7.02 to 18.8.02 was ordered to be treated as dies-non. The applicant made an appeal to the Senior Superintendent, Jaipur FMS, Jaipur. The appellate authority after considering the appeal of the applicant modified the order passed by the Superintendent (Sorting) Jaipur FMS, Jaipur by holding that the period of absence w.e.f. 9.8.02 to 18.8.02 be treated as leave whereas the period from 30.7.02 to 8.8.02 will however remain as dies-non relying upon Rule 162 of the P&T Manual Vol.III. It is against this order that the applicant has filed this OA for the aforesaid reliefs.

3. The facts as stated above are not disputed by the respondents except to the extent that there is nothing on record to show that the applicant consulted Dr. Virendra Singh on 30.7.02 on the advise rendered by the P&T

Dispensary and that the P&T Dispensary referred the case to the SMS Hospital. On merits, it has been stated that the appellate authority after considering the appeal carefully and dispassionately not found the contention of the appellant tenable that he has informed timely to the the HRO, RS Branch, Jaipur on phone about his inability to perform duty, ^{is not sufficient} ~~sufficient~~ When the leave is required on the medical ground, Rule 162 of the P&T Manual Vol.III stipulates that in case of severe illness where leave is required for medical reasons and the official is not able to attend to his duties, he should send medical certificate alongwith first intimation or later on during the course of that day. Copy of Rule 162 of P&T Manual Vol.III has been annexed with the reply as Ann.R5. It is further stated that the applicant should have insisted upon to the Doctor to issue medical certificate of sickness on the same day that is on the date of first consultation, which he has not done. The applicant consulted the Doctor on 8.8.02 and got issued the Medical certificate and submitted the same on 9.8.02. Non-submission of medical certificate come within the purview of unauthorised absence, therefore, the applicant is fully at fault.

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 30.7.02 to 8.8.02 can be treated as dies-non in view of Rule 162 of the P&T Manual Vol.III.

4.2 It cannot be disputed that the applicant remained absent from duty w.e.f. 30.7.02 to 18.8.02 on medical *be*

grounds and for that purpose, he submitted a medical certificate dated 8.8.02 issued by the competent ^{authority} ~~medical~~, on 9.8.02. Whether the late submission of medical certificate can be termed as valid ground for treating the period of absence as dies-non in terms of Rule 162 of P&T Manual Vol.III is the question which requires our consideration. For this purpose, it may be relevant to mention the Govt. instructions as issued vide DG, P&T's letter No. 6/28/70-Disc.I (SPB-I) dated 5th October, 1975 which deals with the action for unauthorised absence from duty or overstayal. Para 1(iii) of the said letter reads as under:-

6.... 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

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disciplinary proceedings and that too after the Government servant represents in this regard."

Thus, from the portion as extracted above, it is clear that the period of absence cannot be treated as break in service or dies-non unless a Govt. servant who has absented himself abruptly or applied for leave which is refused and a notice has been issued to him to the effect that the entire period of absence would be treated as unauthorised entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. Admittedly, no such notice was ever issued to the applicant in terms of the aforesaid instructions. As such the said period of absence on medical ground could not have been treated as dies-non. That apart, perusal of the instructions as quoted above, also indicates that in such cases where a Govt. servant has remained absent and his leave has been cancelled and he has been given notice in terms of FR 17, it is only after the conclusion of the disciplinary action that the order regarding the period of absence can be passed as to whether the same is to be treated as unauthorised absence resulting in loss of pay and allowances and also break in service or the break should be condoned and treated as dies-non. Thus, in the light of the aforesaid instruction, the action of the respondents in treating the period from 30.7.02 to 8.8.02 as dies-non is without any authority of law and cannot be legally sustained and as such the impugned order dated 11.4.03 (Ann.A1) is liable to be quashed and set-aside.

4.3 Now let us also examine the case of the applicant in the light of Rule 162 of the Postal Manual Vol.III on

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which emphasis has been laid by the respondents for treating the period from 30.7.02 to 8.8.02 as dies-non. Extract of Rule 162 of the Postal Manual Vol.III has been annexed as Ann.F5 of this OA 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 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 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

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applicant and he will be liable to be granted leave without pay...."

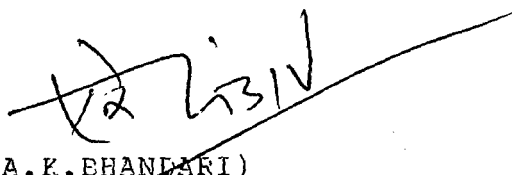
This rule nowhere states that the period will be treated as dies-non in case the medical certificate is not produced within the prescribed time. No doubt, this rule stipulates that where the absence of the official is due to compelling reasons, he should send immediate intimation to the head of his office by the quickest possible means and if the intimation has to be posted, it must be posted the same day and also the medical certificate as per Rule 229 of the SRs of the P&T compilation of the FRS and SRs be submitted alongwith first intimation or later on during the course of the day. This rule further stipulates that "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, it is the production of the certificate which has been made mandatory failing which the Govt. servant shall not be entitled to pay and this period has to be treated as leave without pay.

Therefore, at the most, the period can be treated as leave without pay, in case the Govt. servant fails to submit a medical certificate. This rule nowhere states that the period will be treated as dies-non, if a Govt. servant submits the medical certificate ^{at belated stage}. Thus, the respondents have wrongly applied Rule 162 of the P&T Manual Vol.III in the instant case for treating the period as dies-non which is not applicable in this case and, therefore, the action of the respondents is contrary to rule and instruction governing the point and without any authority of law and as such cannot be upheld.

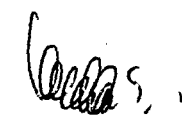
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5. In view of what has been stated above, the impugned order 11.4.2003 (Ann.A1) is hereby quashed and set-aside. The respondents are directed to regularise the period from 30.7.02 to 8.8.02 as period spent on commuted leave on medical certificate. 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.

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


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)