

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 26.04.2004.

Original Application No.341/2003.

Naimuddin Khan S/o Janab Moinuddin Khan by cast Muslim, aged about 32 years, resident of 4324, Opp. Kalwar House, Rasta Topkhana, Chandpole Bazar, presently working as P.A. in CSD, Jaipur-6.

... Applicant.

v e r s u s

1. 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-7.
3. Senior Supdt. Post Offices, Jaipur City, Dn., Jaipur.
4. Post Master, Sastri Nagar, H.O. Jaipur 16.

... Respondents.

Mr. P. N. Jatti counsel for the applicant.
Mr. Tej Prakash Sharma counsel for the respondents.

CORAM

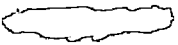
Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R (ORAL) :


The applicant has filed this Original Application against the impugned order dated 24.10.2002 (Annexure A-1) and order dated 16.04.2002 (Annexure A-2), whereby the period from 05.12.2000 to 20.12.2000 was ordered to be treated as dies-non as the applicant submitted medical sick and fit certificate in one form which is a clear violation of provisions of Rule-162 of P&T Manual Vol.III. In relief, he has prayed that these orders may be quashed and set aside and the respondents be directed to grant leave with effect from 05.12.2000 to 20.12.2000 to the applicant.

2. The brief facts of the case are that the applicant while working as Postal Assistant in the Senior Superintendent Post Offices, Jaipur City, at

Shastri Nagar post Office, proceeded on leave w.e.f. 05.12.2000 to 20.12.2000. The case of the applicant is that he felt ill in the morning of 05.12.2000 and he was taken to the S.M.S. Hospital, whereby he remained under the treatment of Doctors of S.M.S. Hospital w.e.f. 05.12.2000 to 20.12.2000.

2.1 It is further stated that on assumption of duties, the applicant submitted a medical certificate issued by the medical authorities of the S.M.S. Hospital but the respondents vide impugned order dated 16.03.2001 treated the aforesaid period as Dies-non. It is further stated that against this order, the applicant filed representation to the Director Postal Services and the Director Postal Services vide  order dated 11.09.2001 (Annexure A-6) remitted the case back to respondent NO.3 for reconsideration of the issue in the light of the direction issued by letter dated 17.08.2001 and to decide the matter accordingly on merits. Thereafter, respondent NO.3 issued a show cause notice to the applicant thereby giving him an opportunity to submit his representation vide office letter dated 26/27.09.2001. Consequently, the respondent No.3 again vide order dated 16.04.2002 (Annexure A-2) passed a fresh order thereby treating the period of absence from duty as Dies-non.

3. It was further recorded by respondent No.3 in the said order that the production of medical sickness certificate w.e.f. 05.12.2000 to 20.12.2000 on 21.12.2000 at the time of joining duty is a lame excuse to cover his absence from duty. The plea taken by him that medical officers of S.M.S. Hospital used to issue medical sickness certificate after recovery from illness is not tenable as it was his personal responsibility to obtain and submit the medical sickness certificate within the prescribed time limit. Against this order, the applicant filed representation dated 30.07.2002 to the Director Postal Services, Jaipur Region, Jaipur O/s the Pr. Chief P.M.S., Rajasthan Circle, Jaipur, The said representation was also rejected vide order dated



24.10.2002 (Annexure A-1) thereby holding that the official did not inform to the competent authority on time in respect of his illness but he submitted medical sick and fit certificate in one form from S.M.S. Hospital, Jaipur on 21.12.2000, which is a clear violation of Provision of Rule-162 of P&T Manual Vol.III. Hence, ~~there~~ ^{These} is no justification for grant of leave applied by him. Thus it can be seen that the appellate authority has passed an order entirely on different grounds than the one on which respondent NO.3 has rejected the representation of the applicant.

4. The applicant has further averred that since the applicant was not in a position to reach to office on 05.12.2000, as such, an application was sent to the Post Master, Shastri Nagar, Jaipur, through father of the applicant. Copy of this application has been annexed with the OA as Annexure A-3. It is further averred that since there was a Postal Strike, as such, except the Chowkidar and some Police men, there was no employee to accept the application. Thereafter, the father of the applicant went to the office of Senior Superintendent Post Office. Some Officers were there but they did not accept the application of the applicant as such when the applicant was declared fit to perform duty on 21.12.2000 he submitted the medical sick and fit certificate issued by the Doctor of S.M.S. Hospital, Jaipur, with the leave application proforma (Annexure A-5). It is on these facts, the applicant has filed this Original Application thereby praying for the aforesaid reliefs.

5. Notice of this application was given to the respondents. The respondents has not disputed the facts as stated above, except that the applicant remained absent from duty w.e.f. 05.12.2000 to 20.12.2000 without information to the competent authority and without sanctioning the leave by the competent authority. The fact that the application (Annexure A-3) submitted by the applicant through his father has been denied. It is further averred that the prescription slip does not have any indication regarding advise to the rest to the applicant. Under these circumstances, the authorities were competent to pass

impugned order as per law.

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

7. We are of the view that the matter is squarely covered by the judgement rendered by this Tribunal in OA No.508/2002 decided on 10.09.2003, Bhambu Ram vs. Union of India & Ors. In that case, the applicant therein proceeded on leave w.e.f. 02.12.2000 to 19.12.2000. He submitted medical certificate of his illness to the authorities immediately for seven days. As such his period of absence from 02.12.2000 to 08.12.2000 was regularised. However, the period w.e.f. 09.12.2000 to 19.12.2000 was treated as dies-non as the applicant did not submit medical certificate immediately and it was submitted only on 20.12.2000 when he joined his duties after remaining absent from duty. This Tribunal in Para 5.1, 5.2 and 6 has observed as under :-

"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 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(SPB-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 allowance for the period of absence under proviso to FR 17 (i) and thus

1
abreak 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 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. Rather, 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 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

iq

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 overstayal of leave. As such the action of the respondents is illegal and without any validity of law and as such the impugned order Ann.A1 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 been annexed as Ann.A12 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 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

42

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 SRs of the P&T, Compilation of the FRs and SRs along with 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 nowhere states that 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 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."

leg

8. In the instant case also the period of absence of the applicant has been treated as dies-non simply on the ground that in the medical prescription (Annexure A-5), it has not been specifically recorded that the applicant is advised to take rest and production of medical sickness certificate w.e.f. 05.12.2000 to 20.12.2000 on 21.12.000 at the time of joining duty is a lame excuse to cover his absence from duty. The version of the applicant that the medical officer of S.M.S. Hospital used to issue medical sickness certificate after recovering the illness ^{is can not be acceptable} as it was his responsibility to obtain and submit the medical sickness certificate within the prescribed time limit. Thus, on the basis of non submission of the medical certificate within the prescribed time and the fact that the medical officer has not recorded that the applicant is advised to take rest, on that ground the period of absence ^{is not} ~~was~~ treated as dies-non.

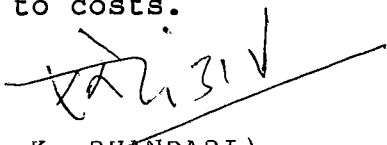
9. As already stated above, the appellate authority has taken entirely different stand while affirming the order passed by respondent No.3 as can be seen from Annexure A-1. He has taken the ground that the applicant has submitted a medical sickness and fit certificate in one form which is in violation of Provision of Rule-162 of P&T Manual Vol.III.


10. We have already held in the case of Bhambu Ram (supra) that violation of Rule 162 of P&T Manual Vol.III, does not empower the authority concerned to treat the period of absence as dies-non. At the most, violation of this rule may entail the applicant for denying the pay and allowances for the said period and the said period will be regularised as leave without pay. We have already held that for treating the period as dies-non, the respondents were ^{to be required} ~~to~~ to follow the procedure as laid down in Government of India's Instructions dated 05.10.1997 reproduced in Para 5.1 of the Bhambu Ram's case (supra), the relevant portion of which has been reproduced above. Admittedly, the respondents have not followed the said procedure.

leg

11. In view of what has been stated above, the impugned orders dated 24.10.2002 (Annexure A-1) and 16.04.2002 (Annexure A-2) is hereby quashed and set aside. The respondents are directed to regularise the period from 05.12.2000 to 20.12.2000 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.

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


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)