

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision:

23/3/04

OA 531/2003

P.N.Meena, SA (ECR) in the office of HRO, RMS, Jaipur Division, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Deptt. of Posts, Lak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Sr.Suptt., Railway Mail Service, Jaipur Dn., Jaipur.
4. Head Record Office, RMS, Jaipur Dn., Jaipur.

... Respondents

CORAM:

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

For the Applicant

... Mr.P.N.Jatti

For the Respondents

... Mr.T.P.Sharma

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA under Section 19 of the Administrative Tribunals Act, 1985 has been filed to seek following relief :

"That by a suitable writ order or direction the impugned order dated 28.4.2003 be quashed and set aside and further the respondents be directed to grant the leave w.e.f. 11.12.2000 to 18.12.2000 on the base of the Medical Certificate granted by the authorised doctor."

2. Facts of the case are that the applicant, an employee in the office of Senior Superintendent of Railway Mail Service Jaipur, fell ill on 5.12.2000 and submitted a medical certificate w.e.f. 5.12.2000 to 10.12.2000 to respondent No.3 same day. At that time the impression was that he will be fit to resume duty within a week but unfortunately sick continued upto 18.12.2000 and joined duty only on 19.12.2000. That respondent No.3, Senior Superintendent, issued orders for dies-non w.e.f. 5.12.2000 to 18.12.2000 treating the entire period as unauthorised absence. However, due to intervention of Director Postal Services the order was changed and the period from 11.12.2000 to 18.12.2000 has been treated as dies-non and the earlier period from 5.12.2000 to 10.12.2000 has been

treated as leave. While awarding dies-non, Rule-162 of P&T Manual Vol.III has been quoted as authority under which such decision has been taken vide Ann.A/1 dated 29.4.2003. That it is evident that the period covered by one medical certificate has been treated as medical leave but the period of 8 days for which also a medical certificate was given has been treated as dies-non. Aggrieved by this, the applicant submitted a representation to Director Postal Services, Headquarter Office of Chief Postmaster General, Rajasthan Circle, Jaipur, vide Ann.A/3. The same was forwarded to Sr.Suptd. (Ann.A/4) with observation that before issuance of aforesaid dies-non order a properly worded show-cause notice had not been served on the applicant. Therefore, the case is remitted back for reconsideration in light of instructions vide letter No.Staff 48-1/53/2000 dated 17.8.2001. However, even thereafter respondent No.3 has decided the period the period from 11.12.2000 to 18.12.2000 as dies-non under Rule-162 of P&T Manual Vol.III. Applicant draws attention to his representation dated 14.2.2003 (Ann.A/6) in which he tried to explain his case but respondents have not considered the same and have taken the decision of dies-non.

3. In the grounds the impugned order has been branded as arbitrary and illegal in view of the fact that applicant was really sick during the entire period from 5.12.2000 to 18.12.2000 and submitted medical certificate for the same. That fitness certificate was issued by the treating doctor on 18.12.2000 and he resumed duty on 19.12.2000 (FN). That he was not fit to resume duty on 11.12.2000, the period after which has been treated as dies-non. Lastly, the case was not to be treated as one of remaining absent from duty without information under Rule-162 of P&T Manual Vol.III. Hence this OA.

4. The respondents have submitted a reply in which, under preliminary objections, it is stated that the impugned order dated 23.10.2001 (Ann.A/2), by which the absence from duty from 5.12.2000 to 18.12.2000 was ordered to be treated as dies-non, was issued due to the fact that the

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applicant remained absent during this period for participating in the strike of Postal employees. However, on joining, after the strike was called off, he submitted medical sickness certificate alongwith medical fitness certificate dated 19.12.2000. The competent authority noticed that the medical certificate was submitted later on during the course of day of resuming duty i.e. 19.12.2000, whereas it should have been submitted before resuming the duty. On the basis of reply to show-cause notice, he decided that the absence was unauthorised from 11.12.2000 to 18.12.2000 as per Rule-162 of P&T Manual Vol.III. Therefore, there is nothing wrong in the impugned order. While replying parawise in detail, it is stated that the medical certificate for the period from 5.12.2000 to 10.12.2000 has been submitted in time in accordance with provisions of Rule-162 aforesaid, whereas certificate of sickness/extension from 11.12.2000 to 18.12.2000 was submitted late i.e. on 19.12.2000 alongwith fitness certificate at the time of resuming duty in contravention of said rule. Therefore, the impugned order was issued. That non-submission of medical certificate within prescribed time limit comes within the purview of unauthorised absence, yet considering the fact that medical certificate for the period from 5.12.2000 to 10.12.2000 was ordered to be treated as leave and from 11.12.2000 to 18.12.2000 as dies-non, having issued show-cause notice, and infirmity if any in the order was removed. Therefore, the order was perfectly legal. That impugned orders are speaking orders based on careful consideration of all facts. In light of this, the grounds of illegality and arbitrariness have been denied. It is once again made clear that applicant participated in the strike from 5.12.2000 to 18.12.2000, during the period of which wide publicity by radio and television was made by departmental authorities urging employees to resume duty and desist from illegal strike but applicant did not pay heed and he has tried to cover his absence due to remaining on strike by producing two medical certificates for the respective periods. That had he submitted the second medical certificate also on time as per rules, the period from 11.12.2000 to 18.12.2000 would not have been treated as dies-non.

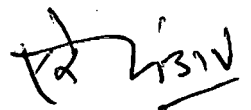
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5. No rejoinder was filed. During arguments, learned counsel for the applicant after reiterating the pleadings drew attention to decision of this very Tribunal dated 10.9.2003 in OA 508/2002 (Bhambu Ram v. UOI & Ors) by Division Bench in which I was also one of the Members and stated that the controversy involved in this case is squarely covered by the facts and circumstances in which the Hon'ble Bench was pleased to allow the OA and quashed and set aside the impugned order by which the respondents had similarly awarded dies-non for the subsequent period of sickness, the medical certificate in respect to which was not submitted on the first day of extended time but on the date of resuming duty and prayed that this case may also be decided accordingly. Learned counsel for the respondents, however, argued that the Tribunal must take notice of the fact that the applicant in this case has completely concealed the fact that during the period in question the Postal strike was on in which he has participated and he is now trying to cover up his absence on strike by submitting these medical certificates.

6. After giving careful consideration to facts and arguments of this case, I am inclined to agree with the contention of learned counsel for the applicant and while relying on the interpretation of rules done in OA 508/2002 conclude that the respondents have wrongly applied Rule-162 of P&T Manual Vol.III in this case while considering the period from 11.12.2000 to 18.12.2000 as dies-non because they have not followed the statutory procedure required to be followed prior to awarding dies-non and, therefore, the same cannot be legally sustained. Instead if at all this period should have been treated as leave without pay. However, in the circumstances of this case, when respondents have treated the earlier period from 5.12.2000 to 10.12.2000 as leave on medical ground on the basis of satisfaction of sickness due to genuine medical certificate, they cannot now disregard the second medical certificate issued by the authorised Medical Officer as irregular. Therefore, they cannot treat the second

period from 11.12.2000 to 18.12.2000 as leave without pay also. It is also wrong on part of respondents to punish staff who participated in illegal strike like this if they are satisfied that this was the real reason of absence, and the medical certificates are a mere cover up.

7. In view of these facts, the impugned order dated 28.4.2003 (Ann.A/1) is hereby quashed and set aside. The respondents are directed to regularise the period from 5.12.2000 to 18.12.2000 as period spent on commuted leave on medical ground. The applicant shall be entitled for salary and allowances for this entire period. Such exercise shall be completed by the respondents within a period of two months from today. The OA stands disposed of accordingly with no order as to costs.



(A.K.BHANDARI)

MEMBER (A)