

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR

Date of order : 18.03.2004

Original Application No.532/2003.

K. L. Kala s/o Shri Ghazi Ram Kala by cast Kala aged about 57 years, resident of House No.129/30, Road No.2, New Sanganer road, Ashokpura, Jaipur-19, presently working as SA (BCR) in the office of the Railway Mail Service, 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 Superintendent, Railway Mail Service, JP Dn. Jaipur.
4. Head Record Office, R.M.S. JP Dn. Jaipur-5.

... Respondents.

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

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

: O R D E R (ORAL) :  
The applicant while working in the office of Superintendent Failway Mail Service Jaipur Division, Jaipur, remained absent from duty w.e.f. 05.12.2000 to 18.12.2000. According to the applicant he fell ill and factum of illness was also informed to Respondent NO.4 and he had also submitted Medical Certificate w.e.f. 05.12.2000 to 10.12.2000 at the

first instance. However, the applicant remained ill up to 18.12.2000 and joined his duty on 19.12.2000 forenoon. It is further averred that Respondent No.3, the Senior Superintendent initially issued orders of dies non w.e.f. 05.12.2000 to 18.12.2000 but due to the intervention of the Director Postal Services the respondent NO.3 issued the order for dies non w.e.f. 11.12.2000 to 19.12.2000 under Rule 162 of P & T Volume-III vide order dated 28.04.2003 (Annexure A-1). It is against this order, the applicant has filed this OA thereby praying that the impugned order dated 28.04.2003 (Annexure A-1) 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 basis of the Medical Certificate granted by the authentic doctor.

2. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that the medical certificate of sickness from the period 5.12.2000 to 10.12.2000 has been submitted by the applicant in time in accordance with the provision of Rule 162 of Postal Manual Vol.III, while the Medical Certificate of sickness/extension Medical Certificate 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 the duty in contravention of provision of Rules 162 of Postal Manual Vol.III. Hence Medical Certificate of sickness for the period from 5.12.2000 to 10.12.2000 only was accepted for the purpose of

leave and unauthorised absence from 11.12.2000 to 18.12.2000 was treated to be dies non. It has further been stated that order of dies non was issued earlier, against which an appeal filed by the applicant was under consideration of the Appellate Authority and the case was remitted back to Respondent No.3 for reconsideration due to some procedural lacuna which was rectified before passing the present orders. Rule 162 of P&T Manual stipulates that where leave is required for medical reason and official is not able to attend his duties, he should sent the medical certificate alongwith the first intimation or later on during the course of that day. Therefore, non-submission of medical certificate within the prescribed time limit comes within the purview of unauthorised absence. Yet considering the fact that the medical certificate submitted for the period of 5.12.2000 to 10.12.2000 was ordered to be treated as leave and unauthorised absence from 11.12.2000 to 18.12.2000 was ordered to be treated as 'Dies-Non' as per rules.

3. I have heard the learned counsel for the parties and gone through the material placed on record.

4. During the course of arguments learned counsel for the applicant has brought to ~~my~~ notice the decision rendered by the Division Bench of this Tribunal in the case of Habibuddin Khan vs. Union of India & Ors. OA No.273/2002 decided on 07.01.2004, in which the same issue was involved and the facts of

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the case are also identical to the present case. At this stage it would be appropriate to reproduce the para 4 onwards of the said judgement which reads as under :-

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 (Annex.A1) and subsequent order dated 25.9.01 (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 dies-non is non 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 may be 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.

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.508/2003-Bhambhu 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 overstayal and prescribes procedure as to under what 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

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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 non 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 (SPP-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 unauthorised, 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 unauthorised 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 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."

5. In any case, the present case is on more strong footing than the case of Habibuddin Khan (supra). In the present case the respondents have regularised the service of the applicant w.e.f. 5.12.2000 to 10.12.2000 but treated unauthorised absence from 11.12.2000 to 18.12.2000 as dies-non. In case the respondents were of the view that the applicant was not ill but participated in the strike of the Postal employees which has commenced w.e.f. 5.12.2000, in that eventuality it was permissible for the respondents nor to sanction leave even for the period w.e.f. 5.12.2000 to 10.12.2000 and proceeded with the matter in accordance with law. Since the respondents themselves have regularised the period w.e.f. 5.12.2000 to 10.12.2000 on the basis of medical certificate submitted by the applicant, it was not permissible for the respondents to treat the period w.e.f. 11.12.2000 to 18.12.2000 as dies-non which is in continuity ; on the ground of late submitting of the medical certificate and also that the applicant has participated in Postal strike and also in view of finding recorded in Habibuddin Khan (supra).

6. In view of what has been stated above, the impugned order dated 29.04.2003 (Annexure A-1) is hereby quashed and set aside. The respondents are directed to regularise the period from 11.12.2000 to 18.12.2000 as commuted leave on medical ground. 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.

  
(M. L. CHAUHAN)

(MEMBER (J))