

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR

Date of Order : 07.07.2004

Original Application No. 554/2003.

Kedar Mal Nai S/o Shri Kishan Lal Sain aged about 61 years, resident of Plot NO. B-39, Barkat Nagar Extension, Tonk Phatak, Jaipur 302015. Retired on 31.01.2002 from the post of Postal Assistant Jaipur City Postal Division.

... Applicant.

v e r s u s

1. Union of India through its Secretary to the Govt. of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi 110 001.
2. Chief Post Master General, Rajasthan Circle, Jaipur 302 007.
3. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur 302 006.

... Respondents.

Mr. C. B. Sharma counsel for the applicant.  
Mr. N. C. Goyal counsel for the respondents.

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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 thereby praying for the following reliefs : -

"i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to treat the period from 29.11.2000 to 23.12.2000 as spent on

commuted leave on medical certificate by issuing necessary leave orders for payment of pay and allowances by quashing memo dated 21/10/2003 (Annexure A/1).

ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

iii) That the costs of this application may be awarded.

2. The facts of the case are that the applicant was working as Postal Assistant with the respondents and proceeded on medical leave from 29.11.2000 to 23.12.2000, for which the applicant submitted a leave application form with required medical/fit certificate. The Respondent No.3 taking into consideration the fact that the applicant avoided Postal Strike Period i.e. 05.12.2000 to 18.12.2000 and submitted such medical certificate and treated the said period as dies-non vide impugned order dated 19.03.2001, which order according to the applicant was never served upon him.

3. The grievance of the applicant is that since he has submitted medical certificate for a period from 29.11.2000 to 08.12.2000 on 29.11.2000 with the application and thereafter for the period 09.12.2000 to 23.12.2000 on 24.12.2000 at the time of joining of his duties but despite of submission

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of medical certificate, Respondent No.3 has arbitrarily treated the said period as dies-non.

The applicant has further submitted that he also remained on leave due to death of his mother on 28.11.2000. The copy of the death certificate was also submitted to the authority concern alongwith reply to the show cause notice but Respondent NO.3 conveniently ignored the said certificate vide impugned order dated 21.10.2003 (Annexure A-1). It is this order which is under challenge.

4. Notice of this application was given to the respondents. Respondents have filed reply. In the reply, it has been stated that the applicant remained unauthorised absent from duty without intimation to Sub Post Master General, City Post Office, Whereas, as per Rule 162 of the Postal Manual Volume III, every Postal employee is required to inform his Incharge/Head of Office about his absence. But in the instant case, the applicant failed to do so and he did not give any information about his absence to the leave sanctioning authority in time as required by Rule 162 of the Postal Manual Volume III. Copy of the extract of the said Rule has been annexed with the reply as Annexure R-1. It is further mentioned in the reply that as per Rule 62 of the Postal Manual Volume III the absence of an official from duty without proper permission is to be treated as dies-non. The fact that Sick Certificate No.05 issued on 29.11.2000 for the period from 29.11.2000 to 08.12.2000 was submitted on 19.12.2000 and Sick Certificate No. 26486 issued on 09.12.2000 for the period from 09.12.2000 to 23.12.2000 was submitted to Sub Post Master, Jaipur City Post Office on 23.12.2000 and the same was received by the leave sanctioning authority on 26.12.2000 has not been disputed.

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

6. From the material placed on record it is clear that the applicant remained absent from duty w.e.f. 29.11.2000 to 23.12.2000 and for that purpose he submitted two Sick Certificates No.05 issued on 29.11.2000 and Sick Certificate No.26486 issued on 09.12.2000 and the same was received by the leave sanctioning authority on 26.12.2000 alongwith leave application. Thus, admittedly there is a delay in submission of the sick certificate but in any case the same was submitted at the time of resuming the duties. The said period was treated by respondent No.3 as dies-non at the first instance vide order dated 19.03.2001. Since the said order was passed without giving opportunity to the applicant, in view of the direction contained in Director Postal Services, Jaipur, Memo dated 05.08.2003, the applicant was given further opportunity to submit the representation vide letter of even number dated 11.08.2003 as to why the period of absence from duty may not be treated as dies-non. The applicant submitted a detailed representation dated 16.08.2003 against the show cause notice, copy of this representation has been placed on record as Annexure A-14. From the perusal of Para 1 of this representation, it is clear that the applicant has also annexed copy of the death certificate of his mother who expired on 28.11.2000. In the representation it has been stated that the leave was not taken by him on account of the fact that the applicant wanted to participate in the strike but according to the applicant since he was retiring on superannuation on 31.01.2002, it was also under these circumstances, he wanted to avail

the leave. Respondent No.3 after considering the representation vide impugned order dated 21.10.2003 (Annexure A-3) passed the following order, relevant portion of which is reproduced hereunder :-

" I have gone through the representation of the ex-official dispassinately. The ex-official has mainly contended that he was on medical leave for the period from 29.11.2000 to 23.12.2000 and he submitted all the documents through S.P.M. Jaipur City. He further added in his argument that due to his mother's death, he remained on leave. I find that said Sh. Kedar Mal Nai failed to submit sick certificate in time as required by the rules. Sick certificate from 29.11.2000 to 08.12.2000 was submitted by him on 08.12.2000 as is apparent from the date on sick certificate. Sick certificate from 09.12.2000 to 23.12.2000 was submitted by the ex-official to SPM Jaipur City on 23.12.2000 which was received on 26.12.2000 in this office under SPM Jaipur City letter No. B2-3/2000-01 dtd.23.12.2000 alongwith a fit certificate dtd. 23.12.2000 and SR-1 of the ex-official. It also revealed that Ex-official neither submitted sick certificate in time nor he gave prior information to the I/c of the Post Office about his absence from duty.

He stated in para-5 of his representation dated 16.08.2003 that he was on the verge of retirement and he submitted medical certificate as per leave due. It shows that the official managed to have sick certificate to get the advantage of leave due. As is evident from the facts as narrated above ex-official wanted to avoid strike period with the plea of sick certificate."

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7. Thus, from the order as reproduced above, it is clear that representation of the applicant was rejected solely on the ground that the applicant neither submitted certificate in time nor he gave prior information to the Incharge of the Postal Office about his absence from duties. It is further mentioned that that applicant managed to have sick certificate to get the advantage of leave due as he wanted to avoid strike period with sick certificate. The fact that mother of the applicant died on 28.11.2000 and for that purpose the applicant has also submitted death certificate before the authority has not been taken into account while passing the impugned order. The fact remains that mother of the applicant has died on 28.11.2000. Under these circumstances, How it could be reasonably concluded that a person whose mother has died on 28.11.2000 will participate in strike which took place w.e.f. 05.12.2000 to 10.12.2000? Such conclusion by the respondent No.3 on the basis of the death of the mother of the applicant could not have been arrived at. As such the impugned order is not legally sustainable on the reasoning that the leave was taken by the applicant to avoid the strike period. Further the late submission of the sick certificate *inso facto* does not warrants that the period under dispute be treated as *dies non*. As per stand taken by the respondents in the reply affidavit the absence of official from duty without proper information and not submitting the intimation immediately to his office is violation of Rule 162 of the Postal Manual Volume III and as such the period can be treated as *dies non*. Such conclusion arrived at is berefite of merit. The matter is no longer *res-integra* and has been decided by this Bench in number of decisions. One of the decision rendered in the case of Bhambu Ram vs. Union of India & Ors. OA NO.508/2002 decided on 10.09.2003 has been placed by the applicant on record as Annexure A-15. The ratio as laid down in that decision is squarely applicable in the instant case also. In that decision, this Tribunal has held under what

circumstances the period of absence from duty can be treated as dis-non. This Tribunal has also held that Rule 162 of Postal Manual Volume III does not authorise the authority to treat the period of absence as dies non. At the most such period can be treated as leave without pay that too in case the applicant has failed to produce the medical certificate. At this stage it will be useful to reproduce Para 5.1 & 5.2 of the judgement which are as follows :-

5.1 The question which requires our consideration is whether the period from 09.12.2000 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 overstaya. 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

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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

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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 certificate, 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 overstaying 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 case 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

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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 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 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 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

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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."

8. Thus, in view of what has been stated above, the impugned order dated 21.10.2003 is hereby quashed and set aside. The respondents are directed to regularise the period of absence from duty w.e.f. 29.11.2000 to 23.12.2000 as period spent on commuted leave on medical certificate. The applicant shall also be entitled for salary and allowances for the aforesaid period. Such exercise shall be done by the respondents within a period of two months from today. The OA is disposed of accordingly.



(A. K. BHANDARI)  
MEMBER (A)



(M. L. CHAUHAN)  
MEMBER (J)