

Central Administrative Tribunal
Jabalpur Bench

OA No. 234/2005

Jabalpur, this the 22nd day of July, 2005.

C O R A M

Hon'ble Mr. Madan Mohan, Judicial Member

Ashok Kumar Jain
S/o late D.L Jain
R/o Shri Chhaya Parisar
MIG 97/A, Flat No.101
Sonagiri, Bhopal.

Applicant

(By advocate Shri V.Tripathi on behalf of
Shri S.Paul)

Versus

1. Union of India through
Secretary
Ministry of Communication
Department of Posts
New Delhi.
2. The Superintending Engineer
(Postal Civil Circle)
Narayanpur Vistar
P.O. Building
Ahmedabad.
3. The Executive Engineer
Postal Civil Division
P.O. Building, Piplani
Bhopal. Respondents.

(By advocate Shri S.K.Mishra)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following
reliefs:



- (i) To set aside the orders dated 17.10.2003 (Annexure A1) and 17.12.2004 (Annexure A2).
- (ii) To direct the respondents to regularize the period as per rules and grant all consequential benefits.

2. The brief facts of the case are that the applicant is working as Head Clerk in the office of the Executive Engineer, Postal Civil Division, Bhopal. On 26.8.2003, the applicant applied for earned leave for 5 days from 1.9.2003 to 5.9.2003 prefixing 2 holidays i.e. 30th and 31st August 2003, and suffixing 3 days i.e. 6.9.03 (Saturday), 7.9.03 (Sunday) and 8.9.03 (Restricted Holiday). He left HQ on 29.8.2003 with the permission of the sanctioning authority. After availing the leave, the applicant submitted his joining report in the forenoon of 9.9.2003. After working for some time, the applicant felt uneasy and he left for home on the same day. On 10.9.2003 he submitted an application for half-day casual leave for the 2nd half (Afternoon) of 9.9.2003. The Executive Engineer (Postal Civil Division) Bhopal issued a show cause notice dated 18.9.2003 seeking explanation from the applicant. Though the applicant submitted his explanation on the same day, a period of 4 days from 6.9.2003 to 9.9.2003 was ordered to be treated as dies-non by the respondents vide order dated 17.10.2003. After an unsuccessful appeal, he challenged the action of the respondents before the Tribunal by filing OA No.860/2004. The Tribunal disposed of the OA at the admission stage directing respondent No.2 to decide the applicant's appeal by passing a detailed, speaking and reasoned order. However, the appeal of the applicant was rejected by the appellate authority vide order dated 17.12.2004. Aggrieved by the rejection of his appeal without application of mind, the applicant has filed this OA.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the impugned orders A1 & A2 are bad in law, arbitrary, unreasonable and unfair. The action of the respondents is contrary to the leave rules and, therefore, the impugned order dated



17.12.2004, which is non-speaking, is liable to be set aside, as well as the order dated 17.10.2003.

4. In reply, learned counsel for the respondents argued that the applicant did not apply properly for earned leave and RH. Applications for both leave have to be submitted separately, whereas the applicant had applied for both leave in one application. The applicant had left HQ without prior permission of the sanctioning authority. The contention of the applicant that he had submitted an application on 10.9.2003 for half day casual leave for 9.9.2003 is not correct. Only when the respondents issued a memo dated 18.9.2003 calling explanation, the applicant submitted his application for half day casual leave. As the applicant did not apply to avail RH for 8.9.2003, he was to return to duty on 8.9.2003. Under the circumstances, suffix was not admissible for 6.9.2003 and 7.9.2003. The learned counsel has drawn my attention to Rule 62 of Postal Manual Vol.III, according to which the impugned orders are passed by the respondents treating the period in question as dies-non. Hence the action of the respondents is perfectly legal and justified.

5. After hearing the learned counsel for the parties and perusing the records, I find that the applicant had applied for earned leave for 5 days from 1.9.2003 to 5.9.2003 (Annexure A6) with permission to prefix 30.8.03 and 31.8.03 and to suffix 6.9.03, 7.9.2003 and RH on 8.9.03. The competent authority had sanctioned the leave. The respondents have not made any specific order against suffixing the 3 days including the RH in the leave application of the applicant. Rule 22 of the Leave Rules reads as follows:

“22. Combination of holidays with leave”

(I) (i) When the day, immediately preceding the day on which a Government servant's leave(other than leave on medical certificate) begins or immediately following the day on which his leave expires, is a holiday or one of series of holidays, the Government servant shall be deemed to have been permitted (except in cases where for administrative reasons permission for prefixing/suffixing holidays to leave specifically withheld) to leave his station at



the close of the day before, or return to it on the day following such holiday or series of holidays, ...”

The respondents have not specifically withheld the permission to suffix the days of holidays mentioned in Annexure A6 by the applicant. I have perused the OM dated 7th October 1960 in which it is mentioned that as the restricted holidays are akin to other closed holidays, it has been decided with the concurrence of the Ministry of Finance and the Comptroller and Auditor-General of India that restricted holiday can be prefixed or suffixed to regular leave or casual leave. I have perused the Annexure R2 Postal Manual filed by the respondents. These are mere administrative instructions, which cannot override the leave rules. It is admitted by both sides that the applicant had reported for duty on 9.9.2003 (forenoon) on expiry of his leave and left the office on the same day because of his illness, for which he had submitted half day leave application on 18.9.2003 when the memo was issued to him.

6. In the conspectus of the facts and circumstances of the case, I am of the considered opinion that the impugned orders Annexures A1 & A2 are not in accordance with rules. Accordingly, both the orders are quashed and set aside and the respondents are directed to consider the application of the applicant for half day ~~casual~~ leave for 9.9.2003, if leave is available in the leave account of the applicant.

7. The OA is disposed of as above. No costs.


(Madan Mohan)
Judicial Member

aa. ग्रामकाल सं ओ/न्या..... जबलपुर, दि.....
प. लिंगायति अर्थ निवास -
(1) सरदार, अस्पताल विभाग, जबलपुर, जबलपुर
(2) आवेदक श्री/श्रीमती/पुरु. दो कांगराल
(3) प्रधार्यां श्री/श्रीमती/पुरु. दो कांगराल
(4) वंशपाला, केप्रज. जबलपुर व्यापारी
सूचना एवं आवश्यक कार्यवाही हेतु

S. Paul *AN/08*
S. K. Mishra *AN/08*

25/10/2003
विषय संस्कार

25/10/2003
F.O. 25/10/2003