

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.265/04

~~BI~~ Jabpur, this the 3rd day of February, 2005

CORAM

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Bimal Kumar Sarkar
Joint General Manager
Ordnance Factory, Katni (MP)
S/o Late A.C.Sarkar
R/o Quarter No.2, West Land
Ordnance Factory Estate
Katni (MP)

Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through
its Secretary
Ministry of Defence
New Delhi.
2. The Union Public Service Commission
through its Secretary
Dholpur House, Shahjahan Road
New Delhi.
3. The Chairman
Ordnance Factory Board
10-A, Shahid Khudiram Bose Marg
Kolkata.
4. The General Manager
Ordnance Factory, Katni
Distt. Katni.

Respondents

(By advocate Shri B.Dasilva)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following
main reliefs:

- (i) Set aside the order dated 11.3.04 (A-1);
- (ii) Direct the respondents to provide all consequential
benefits to the applicant as if the impugned order
is never passed.
- (iii) Direct the respondent No.3 & 4 to pay interest on
delayed payment of the monthly salary of Nov. & Dec.
2000.
- (iv) Direct the respondent No.4 to sanction HPL/EL from
3.10.2000 to 13.10.2000 with prefix 1.10.2000 and
2.10.2000 being holidays.



2. The brief facts of the case are that the applicant is working on the post of Joint General Manager in Ordnance Factory Organisation. The applicant was not keeping well and after due intimation to respondent No.4 he left for his treatment at Calcutta. After getting treatment from Doctor N.N.Roy, a registered/authorized medical attendant who is also in the approved panel of the respondent OFB, the applicant came back with his fitness certificate of the said doctor and also checked up in Civil Hospital, Katni on 13.10.2000 by Dr.Parihar. The applicant was permitted to join duty by respondent No.4 on 14.10.2000. Accordingly, the applicant resumed his services on 14.10.2000 and performed his duties continuously. On 20/21.10.2000, the applicant received an order dated 18.10.2000 directing him to appear before the Principal Medical Officer for second medical opinion in Ordnance Factory Hospital, Katni. (Annexure A3). The applicant appeared before the said PMO on 15.12.2000 and got himself medically examined. The applicant preferred a representation dated 22.10.2000 which was not replied. His salary from 1.10.2000 to 13.10.2000 and from 14.10.2000 to 14.12.2000 has already been paid to the applicant and thereafter the applicant is continuously getting his salary. But the salary for the period from 14.10.2000 to 14.12.2000 was paid belatedly to the applicant. The applicant preferred a representation for payment of interest on delayed payment. When the representation could not fetch any result, he filed OA No.585/03 before this Tribunal. But the respondents issued a charge sheet to him and the enquiry officer had already submitted his report long back but the department was sitting tight over the matter and in the result, the sword of disciplinary proceedings is hanging



over the head of the applicant for no valid reasons. The Tribunal directed the respondents at the admission stage of the OA to decide the representation of the applicant (Annexure A8). Thereafter the respondents passed a punishment order (Annexure A9). While the applicant was exonerated from charge No.3 by the EO, the respondents issued a notice dated 9.1.2004 (Annexure A11) whereby the applicant was directed to submit leave application for the period from 3.10.2000 to 14.12.2000 within 7 days. The applicant immediately made a representation dated 15.1.2004 (Annexure A12). The applicant performed his duties from 14.10.2000 onwards subsequently. Hence the action of the respondents is against rules and law. Hence the OA is filed.

3. ~~Heard the learned counsel for both parties.~~ It is argued on behalf of the applicant that the applicant had joined duty on 14.10.2000, as is shown in letter dated 19.10.2000 (A-3) in which a reference of joining report is made and the applicant continued to serve the institution of the respondents till 14.12.2000. He was directed for further medical examination vide Annexure A3 dated 19.10.2000 and he was thoroughly examined by the concerned PMO on 14.12.2000 and was found fit. The salary of this period was also paid to the applicant. But this payment was delayed by the respondents. Hence he preferred a representation which was not considered. Thereupon the applicant filed an OA but the respondents issued a charge sheet. The applicant had appeared before the PMO for his re-medical examination as directed by the respondents vide A-3 letter dated 19.10.2000.



Hence the action of the respondents is against rules and law and the impugned order deserves to be dismissed.


4. In reply, the learned counsel for the respondents argued that the applicant applied for leave w.e.f. 1.10.2000 and was called upon by the competent authority to defer his request to 11th October, 2000 on account of exigencies of service. In spite of the leave not being sanctioned, the applicant left the station. He was called upon to report for duty immediately and reported only on 14.10.2000 along with a medical certificate issued by Dr. N.N. Roy of Calcutta. In accordance with the authority vested by the CCS (Leave) Rules, 1972 the applicant was called upon to report at Ordnance Factory Hospital, Katni for second medical opinion but he failed to respond. Being a senior officer, the conduct of the applicant was creating a bad example and the competent authority called him for counselling and persuaded him to report to PMO in charge of Ordnance Factory Hospital, Katni. The applicant only reported on 15.12.2000 and was declared fit for duty. The applicant was advised to submit an application for leave for the period 3.10.2000 to 14.12.2000 but he did not submit any application for leave. Accordingly he was not taken on duty till he was made fit w.e.f. 15.12.2000 and the respondents never permitted him to join duties. Hence it cannot be said that he joined duties on 14.10.2000. He should have presented himself before the PMO for re-medical examination vide order dated 19.10.2000 but he appeared before the concerned PMO after two months on 15.12.2000 while it was his legal duty for him to appear before the PMO immediately for re-medical

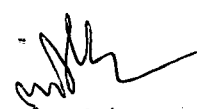


examination. The whole action of the respondents is perfectly legal and justified.

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that the applicant was ordered for further medical examination by the PMO in charge of Ordnance Factory Hospital, Katni. This order was issued to the applicant on 20.10.2000 but he did not appear soon after this order for his re-medical examination as ordered and he appeared before the PMO concerned after about two months. While re-medical examination is always ordered to be done in case of any suspicion about the medical certificate submitted by the employee, hence the applicant should have moved an application on 14.10.2000 before joining when he returned from Calcutta after being declared fit by the Doctor of Calcutta for permission to join duties but he did not seek any permission in this regard. In the aforesaid letter dated 19.10.2000 (Annexure A3), a reference is mentioned about joining report dated 14.10.2000 by which the applicant is directed to contact the PMO in charge of Ordnance Factory Hospital, Katni for his re-medical examination. It does not mean that he was permitted to join duties.

6. Considering all the facts and circumstances of the case, we are of the considered opinion that the OA has no merit and accordingly the OA is dismissed. However, the applicant is given liberty to move an application for leave for the period in question. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman