

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 1st day of August, 2011

ORIGINAL APPLICATION No.190/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Kamal Mohan Mourya,
LDC,
Novodaya Vidyalaya Samiti,
Kherli,
District Dausa (Rajasthan).

... Applicant

(By Advocate : Shri Amit Mathur)

Versus

1. Commissioner,
Novodaya Vidyalaya Samiti,
Administrative Block, IG Stadium,
New Delhi.
2. Deputy Commissioner,
Novodaya Vidyalaya Samiti,
Regional Office,
Jaipur.
3. Shri R.C.Tyagi (Earlier working as Principal),
Novodaya Vidyalaya Samiti,
Kherli, Distrit Dausa, through
Commissioner,
Novodaya Vidyalaya Samiti,
Administrative Block, IG Stadium,
New Delhi.
4. Principal,
Novodaya Vidyalaya Samiti,
Kherli,
District Dausa.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

Anil Kumar

The applicant has filed this OA with the prayer that the respondents may be directed to make payment of the salary and allowances from the period he approached them for joining the duty and upto the period he was actually allowed to join duty. He has also prayed that the respondents may be directed to treat that period as spent on duty.

2. Brief facts of the case are that the applicant proceeded on leave w.e.f. 16.2.2009, for which he submitted the medical certificate on time. Thereafter, on 9.3.2009, he appeared in the office of respondent No.3 [the Principal of the Vidyalaya] for joining the duty but he was not allowed to join duty by the Principal without assigning any reason. As such, he approached the office of the District Collector and submitted a representation there. Considering his request, office of the District Collector directed respondent No.3 to take appropriate action in the matter. The applicant, at the same time, also served a representation to respondent No.3 through post. Copies of the representation as well as the order passed by the office of the District Collector dated 9.3.2009 are annexed with the OA as Ann.A/1 & Ann.A/2 respectively. The applicant, meanwhile, again approached the office of respondent No.3 and asked to allow him for joining duty but his request was not considered favorably by respondent No.3.

3. That respondent No.3 had malice against the applicant and on various occasions he tried to harass and to hamper the interest of the applicant. The applicant, on 12.3.2009, again submitted representation to the District Collector with the prayer to allow him to join duty (Ann.A/3). But, unfortunately, no action was taken on the said representation. The applicant thereafter was served with a letter dated 9.3.2009 from the office of the Principal on 12.3.2009 directing him to appear before the medical board. The applicant appeared before the Chief Medical Officer. However, the Chief Medical Officer denied taking any action in absence of the instructions in this regard, which was communicated by the applicant to

Anil Kumar

respondent No.3 on 13.3.2009 (Ann.A/4). Meanwhile, office of respondent No.2 passed an order dated 19.3.2009 (Ann.A/5) informing the applicant that only the Principal, and no-one else, is the competent authority in the matter. The applicant thereafter was directed to appear before the medical board on 25.3.2009 (Ann.A/6). The applicant, being a disciplined employee, appeared before the medical board on the prescribed date and the board gave his report in favour of the applicant, copy of which is annexed with the OA as Ann.A/7. The applicant, in pursuance of the report submitted by the medical board, was allowed to join duty on 27.3.2009.

4. That, on 4.4.2009, office of respondent No.3 informed the applicant that his leave application for the period from 16.2.2009 to 28.2.2009 has been accepted and for that period salary has been sanctioned. However, for the period from 1.3.2009 to 26.3.2009, no leave application has been submitted by the applicant. Copy of the said communication is annexed with the OA as Ann.A/8. Thus, it is clear that the applicant has been allowed the salary from the date the applicant was allowed to join duty. However, he has been denied salary for the period from 1.3.2009 to 26.3.2009 without any basis. Therefore, the applicant has prayed that, the respondents may be directed to pay him the salary for the said period.

5. The respondents have filed their reply stating that internal audit of the Vidyalaya was to be conducted w.e.f. 16.2.2009 to 19.2.2009 and, therefore, all the concerned employees, including the applicant, were directed to keep their stock registers complete (Ann.R/3). However, the applicant on 17.2.2009 submitted an application (Ann.R/4) for grant of leave for six days w.e.f. 16.2.2009 to 21.2.2009 on the ground of sickness. Keeping in view the internal audit in progress, the applicant was called upon to make available the postage/medical registers, which were in his charge, for the purpose of audit to the audit party but the applicant declined to come to the Vidyalaya. On 23.2.2009, the applicant himself

Anil Kumar

came to office of the Vidyalaya with an application for extension of leave alongwith the medical certificate w.e.f. 19.2.2009 to 25.2.2009 (7 days). The medical certificate (Ann.R/5) was issued by Dr.M.Mishra, Medical Officer (Ayurveda). Thereafter, a communication was addressed by the Principal of the Vidyalaya to the Chief Medical Officer (Ayurveda) on 23.2.2009 (Ann.R/6) to inquire into about the sickness of the applicant for the period from 16.2.2009 to 25.2.2009. The Chief Medical Officer constituted a medical board and vide communication dated 25.2.2009 (Ann.R/7) requested the Principal of the Vidyalaya to inform the applicant to appear before the medical board on 28.2.2009 at 11 O'clock. The applicant was informed accordingly by the Principal vide communication dated 28.2.2009 (Ann.R/8), which was received by the applicant on 2.3.2009. The applicant, vide communication dated 26.2.2009 (Ann.R/9) informed the Principal for extension of his medical leave w.e.f. 26.2.2009 to 7.3.2009 enclosing the medical certificate of the doctor. Allegations of harassment of the applicant at the hands of the Principal have been emphatically denied by the respondents being absolutely baseless and without any actual foundation.

6. Respondent No.3 has also filed a separate reply, in the shape of affidavit, and has denied therein the allegations of malafide made against him by the applicant and has stated that the action taken by him was according to the rules. When the applicant appeared at the Vidyalaya on 9.3.2009 to assume duty, he was informed that a medical board has been constituted to examine the factum of his sickness and was requested to accept the communication to this effect but he refused to accept the letter dated 9.3.2009 inspite of the fact that he was in the knowledge of the fact that he was supposed to appear before the medical board so constituted. However, the applicant submitted a representation to the Chairman of the Vidyalaya Management Committee, Dausa, on 9.3.2009 to the effect that he was not allowed to resume his duty, suppressing the fact that he had the knowledge for his appearance before the medical board. The applicant was

Anil Kumar

requested to appear before the medical board on 26.3.2009, which issued a medical certificate of fitness to the applicant and he was allowed to resume duty on 27.3.2009. Thus, it is apparent on the face of record that the applicant did not obey the instructions issued by the higher authorities to appear before the medical board.

7. The respondents have further stated that vide communication dated 4.4.2009, with reference to the claim of salary for the period from 16.2.2009 to 28.2.2009, payment has already been made on the basis of medical certificate. The applicant has not submitted any application in the prescribed proforma for grant of leave for the period from 1.3.2009 to 26.3.2009 since the applicant resumed duty on 27.3.2009 at the Vidyalaya. Moreover, the representation made by the applicant is yet to be decided by the competent authority. Therefore, the respondents submit that, the present OA has no merit and the same deserves dismissal.

8. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant reiterated the averments made in the OA. He also argued that the applicant never refused to appear before the medical board and hence he should have been allowed to join duty on 9.3.2009 but he was allowed to join duty only on 27.3.2009. Therefore, his salary for the period from 9.3.2009 to 26.3.2009 may be paid by the respondents. Learned counsel for the respondents, however, argued that the applicant did not appear before the medical board on 28.2.2009 and subsequently, as directed by the Principal, on 9.3.2009. The applicant appeared before the medical board only on 26.3.2009, on which date the medical board declared him fit to join duty. As a follow-up action, he was allowed to join duty on 27.3.2009. Therefore, action of the respondents is perfectly legal and within the rules. The applicant has not applied for any leave for the period from 1.3.2009 to 26.3.2009 and, therefore, salary for the said period has not been paid by the respondents.

Anil Kumar

9. From perusal of the documents on record, it is clear that the medical board was constituted for the first time on 28.2.2009 but the Principal issued the letter to the applicant to appear before the medical board on the same date i.e. 28.2.2009, which was received by the applicant on 2.3.2009, which fact the respondents have themselves accepted in their reply. Thus, the applicant was not at any fault for not appearing before the medical board on 28.2.2009. Thereafter, there is no document on record to show that another medical board was constituted by the respondents on 9.3.2009. There is also no document on record to prove that the applicant refused to accept the communication from the Principal to the effect that he has to appear before the medical board on 9.3.2009. Subsequently, the medical board was constituted by the respondents before which the applicant appeared and he was declared fit and allowed to resume duty w.e.f. 27.3.2009. Therefore, in our opinion, the applicant is entitled for the salary for the period from 9.3.2009, the date when he reported for duty, to 26.3.2009, the date when he actually appeared before the medical board. The respondents are accordingly directed to pay salary to the applicant for the said period. For the salary for the period from 1.3.2009 to 8.3.2009, the applicant will apply for the leave due to him in the prescribed proforma and the respondents are directed to take decision on that leave application according to rules.

10. With these observations, the OA stands disposed of. No order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

J. S. Rathore

(Justice K.S.Rathore)
Member (J)

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