

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A No.3710/2015
M.A. Nos.2962/2016 and 2963/2016**

**Reserved On:30.11.2017
Pronounced on:06.12.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Holi Singh,
Aged 50 years
MATE, Delhi Milk Scheme (ID No.13268)
s/o Sh. Ram Singh
r/o A-159, Karampura,
New Delhi-110015.

... Applicant

(By Advocate: Shri S.R. Jolly)

Versus

Union of India through

1. Secretary,
Ministry of Agriculture,
Department of Animal Husbandry,
Dairying and Fisheries,
Krishi Bhawan,
Rajpath Road Area,
Central Secretariat,
New Delhi-110001.

And through

2. General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008.

...Respondents

(By Advocate: Shri Gyanendra Singh)

ORDER

By Ms. Nita Chowdhury, Member (A)

The applicant has filed this Original Application (OA) seeking the following reliefs:-

“(a) quash the impugned order dtd. 02.09.15 wrongfully alleging that the Applicant has been unauthorizedly absent from duty since September, 2013;

(b) direct the Respondents to pay to the Applicant his salary & all other financial dues wrongfully with-held since September, 2013 without any reason whatsoever – communicated ever in any way to the Applicant.

(c) direct the Respondents to pay to the Applicant his salary arrears since September, 2013 – with interest & penalty as considered appropriate.

(d) direct the Respondents not to frequently transfer the Applicant or make him do work which the Applicant has no competence to perform – e.g. give first aid & medical help to Respondents’ employees in the DMS dispensary.

(e) direct the Respondents to reimburse to the Applicant the cost of the present litigation.

(f) pass such other order(s) as it may deem fit and proper under the facts & circumstances of the case.”

2. The facts, in brief are that applicant joined the respondents department, i.e., Delhi Milk Scheme (DMS) as mate in 1994. Thereafter, in 1997 he was regularised on the same post and also got ACP benefits. After rendering service for about 16 years, he became sick and was not able to perform his duty due to lumbar spinal & asthma problems & even suffered loss of hearing in both his ears and weak eye-sight. Thereafter, he was transferred from

Cash Department to Central Dairy but made a request on 30.11.2010 that he may be posted in the Cash Department. On 15.12.2010, respondents wrote to Civil Surgeon, Dr. Ram Manohar Lohia Hospital (Dr.RML Hospital) to medically examine the applicant. Since applicant was already taking treatment at the said hospital, he reported for a formal medical examination. On 18.12.2010, he was transferred from Central Dairy to Pest Control/ETP Section.

3. Applicant has further submitted that on 16.03.2011, DMS wrote to him that he has been unauthorisedly absent from duty since 15.01.2011 and directed him to join duty, but he failed to do so. Hence respondents stopped paying him salary. He gave a representation to the DMS on 18.03.2011 that he was not intentionally absent from duty but as directed by the respondents to appear before Dr. RML Hospital, hence he was not absent on his own but due to medical illness. He even filed a case before the Labour Commissioner against the DMS letter dated 16.03.2011 challenging his unauthorised absence. He has also stated that he was advised surgery of spine. On 23.04.2011, applicant wrote to the General Manager, DMS that since he has got himself medical checked up at Dr. RML Hospital, but had not been provided copy of the medical report and was told that the same will be sent to the concerned department, therefore, he is not at fault. Thereafter, on 13.06.2011, Office of the Regional Labour Commissioner (Central)

forwarded his complaint dated 04.04.2011 to the General Manager, DMS with a direction to submit his reply.

4. He has further submitted that on 01.08.2013, he wrote to the General Manager, DMS that his salary has been deducted on account of alleged absence from duty though he had marked his attendance. He was not paid salary for the month of September, 2013. On 09.04.2014, he wrote to the General Manager to renew his CGHS card but that was not done. On 27.06.2014, he wrote to the President of India for his intervention in resolving his problem. Because of non payment of salary since September, 2013 he filed **OA No.2047/2015** seeking the same reliefs as claimed in this OA and the same was disposed of on 27.07.2015. The said order reads as under:-

“2. During the course of the hearing today, the learned counsel for the applicant submitted that she is limiting the relief only for the payment of his salary which has been withheld by the respondents.

3. In view of the aforesaid submission made by the applicant's counsel, we dispose of this OA with the direction the respondents to release the withheld salary of the applicant if this was done without any valid reasons. However, if the salary was withheld as per rules, the reasons for the same shall be intimated to the applicant. The aforesaid directions shall be complied with, within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.

Service Dasti”.

5. All the pleas raised in the present OA were already raised by him in the previous **OA** bearing **No.2047/2015** (supra). However, while arguing the case for some time, applicant restricted his prayer

that he be paid salary for the period the same has not been paid. In the present OA, he has simply challenged the impugned order dated 02.09.2015 (Annexure A-1) passed in this case. He has thus prayed that the OA be allowed.

6. Respondents in their reply have pleaded that in pursuance of the order dated 27-7-2015 passed by the Hon'ble CAT in OA No.2047/2015 in the matter of applicant, he has already been informed vide speaking order of even number dated 2.9.2015 stating therein the reasons for withholding his salary since September 2013. The matter is also under consideration of the competent authority to take disciplinary action against the applicant for unauthorizedly absenting himself from duties in DMS. It is also clarified the charge memo has already been issued to the applicant for his misconduct i.e. unauthorized absence from the duty (Annexure R-1).

7. They have further submitted that the balances of earned leave and half pay leave in his leave account as on 30.6.2013 were also NIL. However, applicant absented himself from his duties unauthorizedly since 22-3-2013. In response to his application dated 23.4.11 for allowing him to join duty, he was allowed to join his duty with immediate effect vide order dated 4.5.2011 (Annexure R-2). The applicant has not mentioned in the said application that hospital had adjudged him sick and advised him bed rest and surgery and it declined to issue a fitness certificate to him. If the

hospital had adjudged the applicant sick and advised him bed rest and surgery, why he applied vide his application dated 23-4-2011 to allow him to join duty as there is nothing with regard to medical inspection. As per the said medical examination report dated 25-10-2011 (Annexure R-3), the Additional Medical Superintendent after medically examining the applicant, had opined that:-

“Patient has clinical and radiological features of lumbar canal stenosis.”

In its report, the hospital had not recommended any surgery or bed rest or opinion to the effect that whether the official is mentally and physically fit to perform his duties as Mate or otherwise. Accordingly a letter dated 28-8-2015 (Annexure R-4) was again sent to the incharge, IInd Medical Examination of the said hospital to give specific recommendation whether the official is mentally and physically fit to perform his duties as Mate or otherwise. Further, in response to the above, the Incharge (Ortho. Medical Board), Dr. RML Hospital, New Delhi vide letter No.13-9/2015-RMLH (M-II) 9456 dated 5/12/2015 (Annexure R-5) has stated that applicant may be asked to report to Room No.27, Deptt. of Ortho. Medical Board on any Monday at 11.00 AM for examination by the Medical Board. Accordingly the official has been directed vide letter of even number dated 29-12-15 (Annexure R-6) to report to the said hospital for examination by the Medical Board.

8. They have further submitted that the DGM (A) himself met him 29-10-2015 in the presence of Liaison Officer for SC/ST in DMS and handed over a copy of Medical Report. He was clearly informed that since medical board has not recommended any operation, DMS is not authorized to grant him permission for surgery. He was further advised that he may contact the attending doctor and obtain advice from him regarding his surgery and then submit the same to DMS for permission. Applicant refused to agree with the suggestion and mentioned that the medical board has already recommended him for operation but he failed to submit any document in this regard. He further mentioned that if DMS does not give him permission for operation he will get this permission by court. No recommendation had been given by the Dr. RML Hospital in its report dated 25-10-2011 that the applicant needed to be operated upon for Lumbar Spinal and advised bed rest. If the applicant was unfit and was unable to do laborious work and advised bed rest, he should have produced a Medical Certificate to this effect from the Hospital authorities. But he failed to do so.

9. Respondents further submitted that applicant is not eligible for grant of invalid pension because he was absenting from the office on his own without taking prior medical approval. He used to punch the card in the office daily from 22.1.2010 at 8.00 am and out at 04.30 pm. However, the branch officer of DMS Dispensary vide his letter dated 17.05.2013 informed that after marking his

attendance in the office, instead of reporting for duty, he goes somewhere else. If he was forced to sit in the office, he threatens that he will approach the court. Hence, they have prayed that the OA be dismissed.

10. We have heard the learned counsel for the parties and perused the pleadings.

11. We may mention that the only issue involved in this case is whether applicant is entitled to salary for the period of unauthorised absence. From March 2013 to June 2014 the biometric attendance shows that during the month of March, he was present only for 7 days and remained absent for rest of the whole month. Further, from July, 2014 to July, 2015 he has marked his attendance only for 2 days/a few days. From the record it is amply clear that he is a habitual absentee and cannot claim any relief in this OA.

12. An identical question came to be decided by the Hon'ble Apex Court in the case of **Mithilesh Singh Vs. Vs. U.O.I. & Others AIR 2003 SC 1724** wherein it was ruled that absence from duty without prior intimation is a grave offence warranting removal from service. Similarly, the Hon'ble Supreme Court in the case of **State of U.P. and Others Vs. Ashok Kumar Singh (1996) 1 SCC 302**, held that absence of the respondent from duty would amount to grave misconduct and there was no justification for the High Court to interfere with the punishment holding that the punishment was not commensurate with the gravity of the charge.

13. Again, it was reiterated by the Hon'ble Apex Court in the cases of **North Eastern Karnataka Road Transport Corporation vs. Ashappa, (2006) 5 SCC 137** and **State of Rajasthan vs. Mohd. Ayub Naz: 2006 SCC (L&S) 175**, that that habitual absenteeism can be a valid ground for dismissal of an employee from service. Absenteeism from office for a prolonged period of time without prior permission by government servants has become a principal cause of indiscipline which has greatly affected various government services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, he may be removed from service. Further, the Hon'ble Apex Court held in **Delhi Transport Corporation Vs. Sardar Singh (2004) 7 SCC 574** that habitual or continuous absence from duty, without sanctioned leave for long, prima facie, amounts to "habitual negligence of duties and lack of interest in work" which constitutes misconduct under relevant Standing Order of the Corporation.

14. With regard to invalid pension, Rule 38 reads as under :

" 38. Invalid pension (1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely:-

(a) a Medical Board in the case of a Gazetted Government servant and of a non-Gazetted Government servant whose pay, as defined in Rule 9 (21) of the Fundamental Rules, exceeds Two thousand and two hundred rupees per mensem;

(b) Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases.

NOTE 1.- No medical certificate of incapacity for service may be granted unless the applicant produces a letter to show that the Head of his Office or Department is aware of the intention of the applicant to appear before the Medical Authority. The medical authority shall also be supplied by the Head of the Office or Department in which the applicant is employed with a statement of what appears from official records to be the age of the applicant. If a Service Book is being maintained for the applicant, the age recorded therein should be reported. NOTE 2.- A lady doctor shall be included as a member of the Medical Board when a woman candidate is to be examined.

(3) The form of the Medical Certificate to be granted by the Medical Authority specified in sub-rule (2) shall be as in Form 23.

(4) Where the Medical Authority referred to in sub-rule (2) has declared a Government servant for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension."

Since none of the above conditions has been complied with by the applicant, hence he was not found entitled for invalid pension.

15. In view of the above, we find no merit in the OA and the same is dismissed. However, if applicant has any grievance with regard to period for which he has performed duty but was not paid salary, he may prefer a representation within 15 days from the date of receipt of a copy of the order and the respondents may pass appropriate speaking order within a period of one month thereafter under intimation to the applicant. Since we have dismissed the OA, MAs are also rejected. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh