

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1793/2015

Reserved on:10.09.2018
Pronounced on:18.09.2018

Hon'ble Ms. Praveen Mahajan, Member (A)

Parwati Kujur (Inspector)
Aged about 54 years
D/o Late Shri Lachhu Kujur
R/o Block No.7, Qtr. No.7K
Police Colony, Model Town-II, New Delhi. Applicant

(By Advocate: Shri M.K.Bhardwaj)

VERSUS

Commissioner of Delhi Police & Ors. through

1. The Commissioner
Police Headquarter
I.P.Estate, New Delhi.
2. The Joint Commissioner of Police
South Eastern Range, (PHQ),
I.P.Estate, New Delhi.
3. The Dy. Commissioner of Police
South East Distt., Sarita Vihar
New Delhi.
4. The Dy. Commissioner of Police
East Distt., Mandawali Fajalpur
Delhi.Respondents

(By Advocate: Shri Prashant Bhardwaj for Ms. Pratima Gupta)

O R D E R

The applicant has filed this OA seeking the following reliefs:-

"(i) To quash and set aside the impugned letter dated 09.08.2014 & 11.02.2015 and direct the respondents to treat the period from 27.11.2013 to 26.02.2014 as spent on duty for all intents and purposes.

- (ii) To direct the respondents to treat the period from 27.11.2013 to 26.02.2014 as spent on duty being covered by medical documents and release the due benefits to the applicant.
- (iii) Any other or further relief which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case may also kindly be granted in favour of the applicant and against the respondents.
- (iv) Cost of the proceedings may also be awarded in favour of the applicant."

2. Briefly stated the facts of the case are that the applicant was appointed as Sub-Inspector (Executive) in Delhi Police in 1991 and got promoted as Inspector in the year 1998. Thereafter, being the senior most Inspector and meeting the eligibility for promotion as Assistant Commissioner of Police, she was allowed to exercise the powers/duties of ACP vide order dated 03.11.2011.

3. The applicant states that all of a sudden, she was reverted from the aforesaid post of Assistant Commissioner of Police. Being aggrieved, she filed an OA before the Hon'ble Tribunal wherein the reversion order was stayed. However, since interim order was not implemented, the applicant had to file Contempt petition before the Tribunal. The applicant avers that after receiving the Contempt notice, the senior officers got biased against her and issued her a notice of Censure.

4. The applicant contends that during pendency of the OA No.3247/2012, she developed serious ailments and was advised bed rest by doctors of Babu Jagjivan Ram Memorial Hospital,

Govt. of NCT, Delhi. Her health did not improve and she continued on bed rest, as per the medical advice. This fact was duly informed to the respondents and application for grant of medical leave was also submitted (Annexure A-3). The respondents, however, did not pass any order on her application nor was she called for any second medical opinion.

5. On 23.06.2014, she was issued an order for giving explanation about her medical rest (Annexure A-4), to which she replied on 23.07.2014 alongwith all medical documents and prayed for withdrawal of the explanation notice. However, the respondents issued the order dated 09.08.2014 treating the period covered by medical leave as unauthorised absence and directed that the period between 27.11.2013 to 26.02.2014 be treated "as no work no pay", for all purposes. Aggrieved by the said order, the applicant submitted a representation to Joint Commissioner of Police for quashing the order dated 09.08.2014, which has been rejected vide the impugned order dated 11.02.2015.

6. The respondents in their counter submit that the explanation of the applicant was called for vide letter dated 23.06.2014 on the allegations that she had availed 7 days medical rest w.e.f.27.11.2013, which was not sanctioned by the Competent Authority. Thereafter, she had also availed 85 days medical rest

from 04.12.2013 to 26.02.2014 repeatedly, by lodging D.D. entries in the Roznamcha of CAW Cell/SED at her own sweet will. The respondents hold that it was only when she was directed to get herself medically re-examined from the Medical Superintendent, Aruna Asaf Ali Hospital, Rajpur Road, Delhi on 21.02.2014, that the applicant resumed her duty on 27.02.2014, after having availed of 92 days of unauthorised medical rest.

7. The applicant was served an explanation notice on 26.06.2014 to which she replied on 24.07.2014. However, the same was not found satisfactory. Accordingly, her unauthorised absence from 27.11.2013 to 26.02.2014 was decided as period not spent on duty on the principle of "No Work No Pay". The order issued by the Disciplinary Authority on 09.08.2014 was confirmed by the Appellate Authority on 11.02.2015.

8. During the course of hearing, learned counsel for the applicant Shri M.K.Bhardwaj argued forcefully that the applicant was advised medical rest due to her ill health due to which, she was forced to take medical leave. He submitted that it is not the case of the respondents that the medical certificates furnished by the applicant are false. He also tried to emphasize that the respondents are biased qua the applicant since she had filed a Contempt Petition against them in OA No.3247/2012 and this is

what has led to the wrongful punishment imposed upon the applicant.

9. Per contra, the learned counsel for the respondents, Shri Prashant Bhardwaj submitted that the applicant availed medical rest of 92 days without getting permission from the Competent Authority, or submitting any medical certificate, which is in violation of CCS (Leave) Rules, 1972. It was only after she was directed to get herself re-examined from the Medical Superintendent, Aruna Asaf Ali Hospital on 21.02.2014 that she resumed duty on 27.02.2014. He contended that continuous 'rest' of almost three months on account of common fever or cold etc. raises a question mark about the veracity of such a claim. In view of this background, the respondents were left with no option but to take corrective steps, to ensure that indiscipline does not go unpunished.

10. I have gone through the facts of the case and considered the rival submissions made by both sides, carefully.

11. Before I proceed to adjudicate the issue, I briefly touch upon the background of the case mentioned by the applicant in her OA and also referred to by the respondents in their counter. The applicant in OA has stated that she was exercising the power and duty of the Assistance Commissioner, as ordered by the

respondents vide their order dated 03.11.2011, which was discontinued vide their order dated 14.09.2012. This order was challenged by the applicant in OA No.3247/2012 and the Tribunal, as an interim measure directed the respondents to maintain status quo, qua the applicant. Since the interim directions were not followed by the respondents, hence the applicant filed a contempt petition (No.40/2013), which allegedly created a bias in the mind of the respondents, qua the applicant – resulting in their taking a negative approach on her medical leave request.

12. The applicant, has submitted medical certificates showing the diagnosis and medical advise, based on which she sought medical rest. Broadly, the picture is as given below :-

Sl. No.	Hospital	Prescription dated	Diagnosis	Advice
1.	Babu Jag Jivan Ram Memorial Hospital	27.11.2013	Fever chills x one day bodyache	Rest for one week
2.	Babu Jagjiwan Memorial Hospital	04.12.2013	Fever x 7 days – Generalized Bodyache	Rest for seven days
3.	Babu Jagjiwan Ram Memorial Hospital	11.12.2013	-	Rest for five days
4.	Babu Jagjivan Ram Memorial Hospital	26.12.2013	Nausea/vomiting	Rest for two weeks
5.	Babu Jagjivan Ram Memorial Hospital	30.01.2014	Fever x 3 days vomiting	one week
6.	Babu Jagjivan Ram Hospital	06.02.2014	Fever x 3 days vomiting	one week

13. A bare perusal of these documents shows that the applicant was diagnosed as having Fever chills, body ache, vomiting, cough and cold etc. throughout this period. This is followed by some more prescriptions which are not fully legible wherein the applicant has been advised bed rest for 5, 7 or 10 days, intermittently. The applicant has also enclosed some lab reports, to backup her claim of being ill. In almost all the prescriptions, the applicant has been diagnosed with similar symptoms and advised bed rest. During oral hearing, the main trust of applicant's counsel was that these reports are true and have been obtained from a Govt. hospital, hence the respondents have wrongly ignored these and punished the applicant wrongly. The respondents on the other hand have contended that it is only when the applicant received the letter dated 21.02.2014 for getting herself medically re-examined that she presented herself on duty after availing 92 days of unauthorised medical rest.

14. The applicant's case is supported by medical certificates/documents wherein the doctors have prescribed her bed rest on account of her illness/condition. If the continued symptoms of fever/body ache etc. for two months seemed excessive, as argued by the learned counsel for respondents, it

was for the respondents to prove so. However incredulous the prolonged illness of the applicant might seem, unless the respondents make out a case that the medical certificates were obtained fraudulently or in connivance with the hospital authorities, their correctness cannot be doubted. No such enquiry has been produced by the respondents to support their stance that the applicant was wilfully absenting herself from duty, or that the medical certificates produced by her are 'doctored'. In the absence of any such enquiry or corroborative evidence, it is not possible for the Tribunal to doubt the veracity of medical certificates produced by the applicant, from a Govt. Hospital of NCT, Delhi. In their counter, the respondents have emphasised the procedural lapses committed by the applicant while submitting her medical certificates etc. which were either not in the proper format, and/or not from a CGHS dispensary. Be that as it may, these lapses still do not prove that the medical rest availed by the applicant on medical advice, was false.

15. In view of the aforementioned discussions, orders dated 09.08.2014 and 11.02.2015 are set aside. The respondents are directed to treat the period of absence between 27.11.2013 to 26.02.2014 as having been spent on duty. This exercise must be

completed within three months from the date of issue of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

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