

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.60/61/2017

Date of decision: **09.07.2018**

...
CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).
...

Nirmal Kumar son of Sh. Vijay Kumar, aged 30 years, Postal Assistant, Kalanaur, Gurdaspur Division, Resident of C/o Bedi Bajri Crusher, Near 5 Feet Line, Dal Road, Village Bhadroya, Dalhausi Road, Pathankot-145001-Group C.

... **APPLICANT**

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Communications & Information Technology, Department of Posts, New Delhi-110001.
2. Director Postal Services, Punjab Region, Chandigarh-160017.
3. Senior Superintendent of Post Offices, Gurdaspur Division-143521.

... **RESPONDENTS**

PRESENT: Sh. V.K. Sharma, counsel for the applicant.
Sh. Ram Lal Gupta, counsel for the respondents.

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed by the applicant seeking following reliefs:
- 8 (i). Quash the order dated 19.09.2016 (Annexure A-1), vide which the claim of the applicant for grant of salary for the period 01.08.2015 to 21.09.2015 plus subsistence allowance for the period from 22.09.2015 to 30.09.2015 has been rejected vide order dated 19.09.2016 received by him on 23.09.2016 on the ground that he was repeatedly issued letters regarding non-acceptance of his medical certificate, asked to resume his duties but he failed to do so and he has been treated as absent but they have failed to show any evidence as to in which manner the said alleged letters were served upon the applicant and why the medical certificate given from the Government hospitals have not been accepted.
- (2) Issue direction to the respondents to grant the applicant pay and allowances for the period from 1.8.2015 to 21.9.2015 during which period the applicant was not under suspension was on authorized and sanctioned leave and as such he cannot be denied salary for this period, denial of which is illegal and arbitrary and he may also be

granted interest @18% per annum from the date the amount became due to the actual date of payment.

- (3) Issue order or direction to the respondents to grant the subsistence allowance for the period from 22.09.2015 to 30.09.2015 as he was placed under suspension with effect from 21.09.2015 A/N.
- (4) Quash the order dated 19.09.2017 (Annexure A-8) vide which the period of leave from 16.07.2015 to 20.09.2015 has been treated as dies non, being contrary to rule and also grant pay and allowances for the said period as if spent on duty."

2. After exchange of pleadings, the matter came up for hearing.
3. We have heard learned counsel for the parties.
4. Learned counsel for the applicant submitted that despite there being leave on medical grounds along with appropriate medical certificate by the authorized officer, respondents have rejected his request for grant of medical leave and have passed impugned order treating the period from 16.07.2015 to 20.09.2015 as dies-non. He submitted that in such like cases where a person is absent un-authorizedly from duty, the respondents have two course of action to follow. Firstly, they can initiate disciplinary proceedings and secondly, they can condone unauthorized absence by granting leave of kind due, in which even misconduct can be condoned. He submitted that without adopting these two legal courses, respondents have passed impugned order, which is illegal. In support of the above, he placed reliance on judgment in the case of **State of Punjab vs. P.L. Singla** (Civil Appeal No.4969 of 2008) decided on 31.07.2008 and order dated 27.07.2012 passed by Ernakulam Bench of the Tribunal in the case of **K.B. Valsalakumari, IAS vs. Union of India and Ors.** (in O.A. No.654 of 2011).
5. Sh. Gupta, appearing on behalf of the respondents submitted that an employee cannot claim leave as a matter of right and in terms of Rule 7

of CCS (Leave) Rules, 1972, an employer has a right to reject leave. He submitted that since respondents have decided to contemplate departmental proceedings against the applicant, therefore, he has not joined his duty and thus, they have passed the impugned order.

6. We have given our thoughtful consideration to the entire matter and are of the view that answer to the issue lies in Rule 25 of CCS (Leave) Rules, 1972, wherein a discretion has been given to the competent authority to pass order in the above situation, which reads as under:-

"The said provision addresses the situation where an employee overstays beyond the sanctioned leave of the kind due and admissible and the Competent Authority has not approved such extension. The consequences that flow from such refusal of extension of leave include that:

- (i) the Government servant shall not be entitled to any leave salary for such absence;
- (ii) the period shall be debited against his leave account as though it were half pay leave to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.
- (iii) Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

With respect to (iii) above, it may be stated that all Ministries/Departments are requested to ensure that in all cases of unauthorized absence by a Government servant, he should be informed of the consequences of such absence and be directed to rejoin duty immediately/within a specified period, say within three days, failing which he would be liable for disciplinary action under CCS (CCA) Rules, 1965. It may be stressed that a Government servant who remains absent without any authority should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed under the various provisions of CCS (Leave) Rules, 1972 and the disciplinary case should be conducted and concluded as quickly as possible."

Perusal of the rules would indicate that the authorities have been given specific directions/guidance as to how the case of the employee, who over-stays leave is to be considered and decided, which aspect is totally missing in this case.

7. We may record that if law requires something to be done in a particular manner, it has to be done in that manner or not at all. **Privy Council in Nazir Ahmad v. King Emperor**, AIR 1936 PC 253 laid down the dictum that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all. A constitution Bench of the Hon'ble Apex Court in **Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala & Ors.** [J 2001 (9) SC 61] reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the same itself.
8. In the light of above, since competent authority has not considered claim of the applicant in view of above cited Rule, therefore, we deem it appropriate to remit matter back to the respondents to reconsider the same in the light of Rule 25, to which, learned counsel for the applicant has no objection.
9. Accordingly, the impugned order dated 19.09.2016 is quashed and set aside. At the same time, the matter is remitted back to the respondents to reconsider the same in the light of Rule 25, cited above.
10. The O.A. stands disposed of in the above terms and pass orders thereafter. The parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 09.07.2018.
Place: Chandigarh.

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