

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

T.A. No. 34 of 2016

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Mr. Harekrishna Nayak, aged about 50 years, S/O-Late Mayadhar Nayak, Sr. Master, Ispat Vidyalaya, Sector-18, Rourkela, Dist-Sundargarh.

.....Applicant

-Versus-

1. Chariman, SAIL, Ispat Bhawan, Lodhi Road, New Delhi.
2. The General Manager(P&A), SAIL, Rourkela Steel Plant, Rourkela, Dist-Sundargarh.
3. Dy. Manager (P & A) M & PH & Convener, J.GC(TIM) Group, SAIL, RSP, Rourkela, Dist-Sundargarh.
4. Manager Education, SAIL, RSP., Rourkela, Dist-Sundargarh.

.....Respondents

For the Applicant : Mr. R. N. Mishra & S. K. Das

For the Respondents: Mr. J. K. Tripathy, B.P. Tripathy

Heard & reserved on: 26.04.2019 Order on: 10. 05.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member(A):

The short dispute in this case relates to entitlement of the applicant to avail Commuted Leave for five days from 24.10.1994 to 29.10.1994 which was in continuation to the Puja vacation availed by the applicant. Though the applicant submitted a medical certificate dated 29.10.1994(Annexxue-A/1) after joining duty after leave, the respondents vide letter dated 01.11.1994 (Annexure-A/2) informed the applicant that the medical certificate is not acceptable to the respondent no.4, for which no reason was mentioned. Vide letter dated 06.02.1995(Annexure-A/3), the applicant was informed that the medical certificate furnished by the applicant has been sent for verification. Then vide order dated 10.04.1995 (Annexure-A/4), the respondents informed the applicant as under:

“It has been confirmed by the concerned treating doctor that he has treated you privately at his residence.

In such circumstances grant of commuted leave is not permissible under existing rules of company.

Therefore, your request for grant of commuted leave for the period of 24.10.1994 to 29.10.1994 cannot be acceded to.

The Medical Certificate dated 27.10.1994 of the attending doctor (Regd. No. 2679) is returned herewith.”

2. Thereafter, the applicant submitted a fresh medical certificate dated 08.05.1995 which was also not accepted by the respondents vide letter dated 06.01.1996(Annexure-A/5). Then the applicant submitted a representation dated 06.03.1996 (Annexure-A/6) stating that the certificate furnished by him from a

Government Ayurvedic doctor is admissible even if the concerned doctor has informed that he had treated the applicant privately at his residence. The grievance of the applicant was also not accepted vide letter dated 19.11.1996 (Annexure-A/7) of the respondents. Thereafter, the applicant approached Hon'ble High Court by filing the OJC No. 12424 of 1997 with the following prayer:-

“Under the circumstances it is prayed that your Lordships would be graciously pleased to admit the Writ Application and after hearing the parties may direct the Opp. Party to sanction commuted leave from dated 24.10.1994 to 29.10.1994 in favour of the petitioner.

And any other direction(s) Order(s) as deemed fit and proper may be passed;

And for this act of kindness the petitioner as in duty bound shall ever pray. “

3. The OJC filed by the applicant has been transferred to this Tribunal for adjudication as the present Transfer Application(in short TA) . Learned counsel for the applicant and respondents were heard and the pleadings on record are perused by me. The TA is considered to have been filed in time as the applicant had approached Hon'ble High Court in time by filing the OJC No. 12424 of 1992. No ground of delay has been taken by the respondents in their counter.

4. The stand of the respondents in the counter is that the applicant after availing Puja vacation in 1994 reported for duty on 31.10.1994 instead of 24.10.1994. It is stated that the applicant furnished the medical certificate dated 29.10.1994 with application for Commuted Leave, which could not be granted as per the existing policy of the respondents and the employee, instead of applying for any leave other than the commuted leave, persisted for sanction of commuted leave. It is also stated that this is a matter of the discretion of the employer for which this claim for sanction of Commuted Leave is not admissible.

5. At the time of hearing, learned counsel for the respondents relied on the personnel policy Circular No. 346 dated 12.06.1981 copy of which has been furnished by the learned counsel. Paragraph 10.07 of the said policy stated as under:-

“10.07 Application for leave or extension of leave on medical gratuity shall be supported by a certificate from a medical officer of the company or where there is no such officer, a Government Medical Officer, or failing him, from a registered medical practitioner stating period for which the leave is recommended.....”

6. In this case the applicant was in his village for availing the Puja Vacation ending on 23.10.1994 and since no company Medical Officer was available in his village, the applicant had reported to the Government Ayurvedic doctor about his illness and he was treated at the Doctor's residence privately and the certificate

dated 29.10. 1994 was issued by the Doctor. The respondents, vide letter dated 10.04.1995(Annexure-4 to the TA) informed that since the concerned Doctor has treated the applicant in his residence in private capacity, the medical certificate was not acceptable.

7. The Paragraph 10.07 of the personnel policy dated 12.06.1981 of the SAIL, was perused. It is noticed that the respondents have not rejected the claim of the applicant because the certifying doctor was not competent to issue such certificate. As stated in letter dated 10.04.1995(Annexure-A/4 to the TA), it was not accepted since the Doctor had treated the applicant Privated at his residence. There is nothing in Para 10.07 of the personnel policy or any other instructions/rules furnished by the respondents to substantiate the ground taken by them that the commuted leave cannot be sanctioned if the employee is treated by a Government Medical Officer Privated at residence. Hence, such ground taken for rejecting the claim is not tenable.

8. In view of the discussions above, the TA is allowed and the respondents are directed to sanction the Commuted Leave of the applicant for the period from 24.10.1994 to 29.10.1994 by virtue of the medical certificate dated 29.10.1994 furnished by the applicant and extend consequential benefits to him as per law. There will be no order as to cost.

(Gukul Chandra Pati)
Member(Admn.)

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