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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00105/2015

Monday, this the 4th day of February, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Smt.Janaki Menon,
W/o.C.K.Menon,
Librarian (Retired),
Kendriya Vidyalaya, Thrissur,
Puranattukara P.O.
Residing at 3/4 KVS Quarters,
Puranattukara P.O., Thrissur.

...Applicant

(By Advocate – Mr.P.V.Mohanan)

v e r s u s

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi – 110 602.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Bangalore – 560 042.
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, LIT Campus,
Chennai – 600 036.

...Respondents

(By Advocate – Mr.K.I.Mayankutty Mather)

This application having been heard on 24th January 2019, the Tribunal on 4th February 2019 delivered the following :

O R D E R

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The reliefs sought by the applicant in this O.A is as follows :

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1. To call for the records leading to Annexure A-20 and set aside the same in so far as it denies leave salary for the period from 7.8.2006 to 8.12.2009.
2. To direct the respondents to fix and disburse the leave salary for the period from 7.8.2006 to 8.12.2009 by invoking the provisions contained in Rule 44 and 45 of CCS (Leave) Rule, 1972.
3. To direct the respondents to disburse the arrears of pay and allowances for the period from 7.8.2006 to 4.12.2009 forthwith.
4. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.

2. This is second round of litigation by the applicant. Earlier she has approached this Tribunal by filing O.A.No.824/2011. The said O.A was disposed of by this Tribunal vide order dated 7.2.2013. The relevant part of the same reads as under :

12. From the above, it could be seen that though the Medical certificate or leave application may not be in the format the fact remains that the inability of the applicant from attending the office is purely on medical ground and that the applicant at least on two occasions had been examined by a team of doctors. Thus, there cannot be any doubt about the applicants having been absent on medical grounds. Thus, when the authorities were convinced to sanction leave, the same should be only on medical ground and if the rules permit for grant of increment for the period of absence on medical ground and leave had been also sanctioned, there should not be any bar in considering the case of the applicant for grant of annual increment for the period from 2006 to 2009.

13. In so far as advancing the date of posting as Librarian, it is not exactly known as to what purpose would it serve, for as per the counsel for the applicant, the post of TGT as well as Librarian carried the same pay scale and the applicant was on leave till she joined as Librarian in 2009. As such, no useful purpose would be served in adjudicating this issue. Strictly speaking, since the percentage of disability had not been specified till 2009, we do not find anything wrong in the action of the respondents in not considering the case as of 2007 for change of post. The citation of 1984 KLT 141 is of least assistance to the applicant as the applicant was continuously on leave till she joined in 2009 as Librarian.

14. In view of the above the OA is disposed of with a declaration that the period of absence from 07-08-2006 till the date the applicant joined the post of Librarian is treated as leave on medical ground and the respondents are directed to consider the case of the applicant for grant of annual increment, if the rules provide for the same. In so far as the other relief of advancing the date of posting as Librarian is concerned, no case is made out.

3. The aforesaid order is challenged by the respondents before the Hon'ble High Court of Kerala by filing OP (CAT) No.3708/2013 which was dismissed by the Hon'ble High Court vide judgment dated 28.10.2013. Thereafter though vide order dated 17.1.2014 the period of absence of the applicant from 7.8.2006 to 8.12.2009 was treated as Extra Ordinary Leave on medical ground, but vide the impugned order dated 2.9.2014 her claim for leave salary and allowances from 7.8.2006 to 4.12.2009 was rejected on the ground that as per Rule 40(5) CCS (Leave) Rules, 1972 the same is not admissible. Hence she approached this Tribunal by filing the present O.A seeking the aforesaid reliefs.

4. Notices were issued. The respondents have filed reply statement wherein they have submitted that the Medical Superintendent, District Hospital, Thrissur had reported as per his letter C3-10810/09/DMOH dated 24.9.2009 that the applicant had appeared before the Medical Board on 21.8.2009. Kendriya Vidyalaya Sangathan, Regional Office, Bangalore had forwarded the medical certificate issued by the Medical Board, Thrissur to KVS (Head Quarters), New Delhi. Accordingly, KVS (Head Quarters) issued Memorandum No.F.17-2/2007/KVS (HQ) (Estt.II) dated 23.11.2009 posting the applicant as Librarian in Kendriya Vidyalaya, Thrissur by creating a supernumerary post in the pay scale of Rs.5500-9000 being an identical pay scale of Trained Graduate Teacher wherein she joined on 9.12.2009. The applicant after joining in the supernumerary post had filed two representations – one for regularization of absence from duty from 7.8.2006 to 8.12.2009 as Extra Ordinary Leave on medical grounds (EOL

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on medical grounds) and the other for grant of eligible increment for the period from 2006 to 2009. It is submitted that even though no proper leave application with medical certificate was submitted by the applicant, the 2nd respondent being the competent authority taking a lenient view regularized the complete period by sanctioning Extra Ordinary Leave on medical grounds wherever Medical Certificates are available with the certification of Principal KV, Hebbal about her absence even though it was not supported by medical certificate and Extra ordinary Leave on private affairs for the remaining period due to non availability of medical certificates/leave application was granted as per Office Letter F.13044-3/2009-KVS(BGR)/16267 dated 15.1.2010. The second representation was for sanctioning increment for the whole period of absence without considering whether it is supported by medical certificate or not, but since there was no provision in the rules for such a consideration in the absence of any medical certificate, it was not agreed to. Hence both the representations were disposed of as per Office Memorandum No.13013/22/2009-KVS(BGR)/19427 dated 23.3.2010. Aggrieved the applicant has filed O.A.No.824/2011 which was disposed of by this Tribunal on 7.2.2013. In compliance of the said order the Deputy Commissioner, KVS, Regional Office, Ernakulam vide Memorandum F.No.31065/OA 824/2011/KVS (EKMR) dated 17.1.2014 (Annexure A-16 and Annexure A-17) ordered that the period of absence of the applicant from 7.8.2006 to 8.12.2009 will be treated as Extra Ordinary leave on medical ground and the pay of the applicant has been refixed as detailed below :

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Date	Pay in the pre-revised scale of Rs.6500-200-10500/-	Pay fixed in the revised Pay Band of Rs.9300-34800/- GP Rs.4800/-	Remarks
1.1.2006	Rs.8300/-	Rs.15440/- + GP Rs.4800	
1.7.2006		Rs.16050/- + GP Rs.4800	
1.7.2007		Rs.16680/- + GP Rs.4800	Monetary benefit of increments from 1.7.2007 will not be paid for the period from 7.8.2006 to 8.12.2009 as the teacher was EOL on medical grounds. Salary will be paid @ Rs.18000/- + GP Rs.4800/- wef 9.12.2009.
1.7.2008		Rs.17330/- + GP Rs.4800	
1.7.2009		Rs.18000/- + GP Rs.4800	
1.7.2010		Rs.18690/- + GP Rs.4800	
1.7.2011		Rs.19400/- + GP Rs.4800	
1.7.2012		Rs.20130/- + GP Rs.4800	

5. The applicant again submitted a representation dated 19.6.2014 requesting disbursement of leave salary and allowances with effect from 7.8.2006 to 4.12.2009. The Deputy Commissioner, KVS Ernakulam Regional Office vide letter dated 2.9.2014 informed the applicant that the period 7.8.2006 to 8.12.2009 is treated as Extra Ordinary Leave on medical grounds and no leave is admissible as per Rule 40 (5) of the CCS (Leave) Rules, 1972. Extra ordinary leave was granted to the applicant on medical grounds but no payment is made as decided by the respondents.

6. Heard learned counsel for the parties at length. This Tribunal is of the view that the respondents authorities have shown their magnanimity to the applicant and done the needful as required under the service law. He has been given equivalent post because of her physical disability to perform duty and she has been appointed to the post of Librarian by creating a supernumerary post in the pay scale of Rs.5500-9000 being an identical pay

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scale of Trained Graduate Teacher wherein she joined on 9.12.2009.

Besides the respondents have regularized the period of absence from 2006 to 2009 despite the improper leave application submitted by the applicant.

We find no infirmity in the action of the respondents. The O.A is devoid of merit and accordingly the same is dismissed. No costs.

(Dated this the 4th day of February 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00105/2015

- 1. Annexure A-1** – True copy of the representation dated 19.4.2006.
- 2. Annexure A-2** – True copy of the Medical Certificate dated 29.4.2006.
- 3. Annexure A-3** – True copy of the Requisition No.F.53-Estt/2006/KVS(BGR)/15875 dated 28.2.2007.
- 4. Annexure A-4** – True copy of the letter issued by the Medical Board dated 19.4.2007.
- 5. Annexure A-5** – True copy of the proceeding F.1-3/2007-KVS(BGR)/1174 dated 30.4.2007.
- 6. Annexure A-6** – True copy of the Communication No.F.17-2/2007/KVS(Hqrs.) dated 1.1.2009.
- 7. Annexure A-7** – True copy of the Letter No.F.53-Estt/2008/KVS(BGR)/4147 dated 2.1.2009.
- 8. Annexure A-8** – True copy of the proceeding F.17045(creation of posts)/2009-KVS (CHER)/11804 dated 9.7.2009.
- 9. Annexure A-9** – True copy of the Medical Certificate along with covering letter No.C3-10810/09/DOH dated 24.9.2009.
- 10. Annexure A-10** – True copy of the proceeding No.F.17-2/2007/KVS(HQ)(Estt.II) dated 23.11.2009.
- 11. Annexure A-11** – True copy of the representation dated 25.6.2010.
- 12. Annexure A-12** – True copy of the proceeding F.No.17067(167)2010-KVS(L&C)(Estt.II) dated 3.8.2010.
- 13. Annexure A-13** – True copy of the representation dated 20.7.2011.
- 14. Annexure A-14**– True copy of the order in O.A.No.824/2011 dated 7.2.2013.
- 15. Annexure A-15** – True copy of the judgment in OP(CAT) No.3708/2013 dated 28.10.2013.
- 16. Annexure A-16** – True copy of the proceeding F.No.31065/OA824/2011/KVS(EKMR)/6090 dated 17.1.2014.
- 17. Annexure A-17** – True copy of the proceeding F.No.31065/OA824/2011/KVS(EKMR)/6090 dated 17.1.2014.
- 18. Annexure A-18** – True copy of the representation dated 17.6.2008.

- 19. Annexure A-19** – True copy of the representation dated 19.6.2014.
- 20. Annexure A-20** – True copy of the proceeding F.No.31029/Leave/2014-15/KVS(EKM)/11073 dated 2.9.2014.
- 21. Annexure A-21** – True copy of the medical report and certificate issued in Form-III under Rule 4 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.
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