

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.310/00939/2016

Dated Tuesday, the 13th day of November, Two Thousand Eighteen

PRESENT

**HON'BLE MRS.JASMINE AHMED, MEMBER(J)
&
HON'BLE SHRI T.JACOB, MEMBER(A)**

Mr.P.Gangadharan,
Sub Postmaster,
Dindigul Collectorate SO,
Dindigul 624 002.

... Applicant

By Advocate M/s S.Arun

Vs.

1.Union of India rep., by
The Postmaster General,
Southern Region (TN),
Madurai 625 002.

2.The Senior Superintendent of Post Offices,
Dindigul Division,
Dindigul 624 001.

... Respondents

By Advocate Mr.J.Vasu

ORDER

(Pronounced by Hon'ble Mrs.JASMINE AHMED, Judicial Member)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following relief:

“(i)To set aside Memo No.B1/PF/PG dated 02.04.2014 and Memo No.VIG/18-02/14-15/MA. Dated 13.03.2015 issued by the 2nd and 1st respondents respectively and consequently direct the respondents to grant him his medical leave for the period from 13.04.2013 to 27.05.2013 and to
(ii)To pass such other orders as are necessary to meet the ends of justice.”

2. The brief factual matrix of this case is that the applicant who was working as Postal Assistant (PA) at Pandian Nagar SO under Dindigul Division was transferred to Kodaikanal SO, vide Office Letter No.B1/2-1/2013 dated 11.04.2013. He was relieved from Pandian Nagar SO on 12.04.2013 afternoon. It is contended by the counsel for the applicant that the applicant in the process of shifting fell sick and forwarded a leave letter dated 13.04.2013 seeking on Earned Leave (EL) on Medical Certificate (MC) from 13.04.2013 to 27.04.2013 through registered post. The applicant further applied for extension of leave for another fifteen days up to 12.05.2013 for which his case was referred for second medical opinion, vide Office letter dated 07.05.2013 and the same was returned by the Joint Medical Officer, Dindigul, vide Lr.No.O.MU.No.4909 dated 17.05.2013 with a remark to decide the case at the departmental level only as the the leave was expired on 12.05.2013. The applicant further applied for extension of leave up to 11.06.2013 for which he was again referred for second medical opinion, vide office letter dated 16.05.2013 and again the same was returned by the Joint Medical officer, Dindigul, vide Letter No.O.MU.No.4976 dated 30.05.2013 stating to submit all the leave records as the previous reference was already returned. In the meantime, the applicant joined duty at Kodaikanal SO on

27.05.2013 afternoon by producing medical fitness certificate. It is also contended by the counsel for the applicant that after joining his new place of posting, the applicant made a request for issuance of withheld amount of pay and allowances to him which was also released to him. Afterwards, a show cause notice was issued to the applicant for his unauthorized absence during the period from 13.04.2013 to 27.05.2013 as to why the unauthorized period should not be treated as 'Dies-non', vide office letter No.B1/PF/PG dated 02.01.2014 to which the applicant submitted his explanation dated 09.01.2014. But the respondents without considering his reply to the show cause notice have declared the leave period as "Dies-non" vide OM No.B1/PF/PG dated 02.04.2014. It is the contention of the learned counsel for the applicant that the applicant after falling sick immediately has informed the respondents and sought for leave which was already in his credit. He also contends that the applicant was suffering from respiratory condition and he consulted the family physician and was advised to be in bed rest for fifteen days which was subsequently extended for nearly one and a half months. He also contended that as soon as his health conditions improved, he immediately joined on 27.05.2013 before the expiry of his extended leave up to 11.06.2013. Hence, the counsel for the applicant argues that if it was an intentional leave on the part of the applicant, the applicant could have continued till 11.06.2013 but the moment the applicant found himself fit, he joined the new place of posting after submitting medical fitness certificate. The counsel for the applicant vehemently argues that the respondents allowed him to join accepting the medical fitness certificate and also the applicant was allowed to draw his salary for the said leave period between 13.04.2013 to 26.05.2013. Hence he states that treating the period between 13.04.2015 and 26.05.2013 as "Dies-non" is nothing but an

afterthought of the respondents which is initiated belatedly only on 02.01.2014, i.e., after more than six months from the date of the actual leave of the applicant. The applicant states that the respondents have treated the period as "Dies-non" taking into account that the applicant has violated provisions contained in Rule 62 of P&T Manual Volume III. He also states that in the same Manual, Rule 162 clearly mandates the authorities to grant medical leave to an employee/official if he/she produces a medical certificate in proper form before the leave sanctioning authority. The applicant has produced a proper medical certificate while joining his new place of posting which was completely accepted by the respondents without any question and on the request of the applicant the leave salary was also released to him. The counsel for the applicant states that nowhere the case of the applicant can be treated as unauthorized absence as after falling sick the applicant immediately brought about his sickness to the notice of the respondents and also produced a valid medical certificate while joining back to his duty. He also contends that it is also not the case of the applicant that the applicant did not join to his new place of posting, as soon as he became medically fit. Hence the action on the part of the respondents treating the leave period as "Dies-non" is completely arbitrary, illegal and violative of principles of natural justice.

3. The respondents have contested the case by filing their counter affidavit. Counsel for the respondents states that the applicant was transferred and posted as PA, Kodaikanal SO in the interest of service and was directed to join at Kodaikanal SO at once by the 2nd respondent, vide Lr.No.B1/2-1/2013 dated 11.04.2013. Accordingly the applicant was relieved from Pandian Nagar SO on 12.04.2013 afternoon. But instead of joining at Kodaikanal SO, the applicant forwarded a leave letter dated 13.04.2013

seeking EL on Medical Certificate (MC) from 13.04.2013 to 27.04.2013 through Registered Post. The applicant was intimated about the non grant of leave and was directed to joint at Kodaikanal SO, vide 2nd respondent's letter dated 25.04.2013 but the applicant disobeyed the order. Accordingly, the Postmaster Dindigul HO was directed to stop the drawal of duty pay and allowances of the applicant. He also contended that the applicant further applied for extension of leave for another fifteen days from 28.04.2013 to 12.05.2013 and his case was referred for second medical opinion, vide 2nd respondent's letter dated 07.05.2013 which was returned by the Dean, Medical Board, Government Headquarters Hospital, Dindigul, vide Letter No.O.MU.No.4909 dated 17.05.2013 to decide the case at the departmental level as the leave period applied had already been over by 12.05.2013. The applicant again applied for extension of leave from 13.05.2013 to 11.06.2013 which was again referred for second medical opinion, vide 2nd respondent's letter dated 16.05.2013. The Dean, Medical Board, vide letter dated 13.05.2013 again returned it stating to submit all the leave records along with the ones that had already been returned which was not submitted to the Dean, Medical Board since the applicant joined back his duty at Kodaikanal SO on 27.05.2013 afternoon by producing medical fitness certificate. However, the case of the applicant for grant of leave was submitted to the 2nd respondent. The applicant was issued a show cause notice dated 02.01.2014 as to why the period from 13.04.2013 to 27.05.2013 should not be treated as "Dies-non". The applicant submitted his explanation on 09.01.2014 but his explanation was not found to be convincing and the 2nd respondent ordered the entire period to be treated as "Dies-non", vide memo No.B-1/PF/PG dated 02.04.2014. The applicant also filed an appeal against the memo dated 02.04.2014 in regard to "Dies-

non”to the Director, Postal Services, Southern Region, Madurai to grant him medical leave availed by him and to set aside/cancel the Office Memo dated 02.04.2014 issued by the 2nd respondent treating the leave period as “Dies-non”. The counsel for the respondents contended that the appellate authority carefully considered and examined the appeal of the applicant dated 13.05.2014 and found that the submission of leave by the applicant after being relieved from the post to join new place of posting is a ploy of the applicant to avoid the new place of posting and the reasons given by him in the explanation were not found to be worthy of consideration for setting aside the order of “Dies-non” dated 02.04.2014. The counsel for the respondents states that the applicant cannot avail leave on his own whims and fancies as leave has to be sanctioned prior before availing the same. As the applicant was informed about non-sanction of his leave and still the applicant continued on leave, treating the entire period as “Dies-non” is nothing arbitrary, illegal or violative of principles of natural justice on the part of the respondents as alleged by the applicant and states that the OA needs to be dismissed.

4. Heard the rival contentions of the parties, perused the documents on record and also relied upon judgements by the parties.

5. The main issue to be decided in this case is whether the period between 13.04.2013 to 26.05.2013 can be treated as “Dies-non”or not.

6. It is not disputed that the applicant was transferred from Pandian Nagar SO to Kodaikanal SO, vide order dated 11.04.2013, relieved on 12.04.2013 afternoon from Pandian Nagar SO and the applicant applied for leave from 13.04.2013 to 27.04.2013 on medical grounds through registered post informing the respondents about his illness. The applicant again requested to extend the leave for another fifteen days w.e.f 28.04.2013 to

12.05.2013. Thereafter, he again applied for extension of leave from 13.05.2013 to 11.06.2013 and ultimately he joined his new place of posting, i.e., Kodaikanal SO on 27.05.2013 afternoon by producing a medical fitness certificate which was not disputed by the respondents and was accepted by the respondents and on the basis of the medical certificate and on his request the leave salary was also released to him. It was contended by the counsel for the respondents that the applicant was informed about non-grant of leave "but instead of that also the applicant continued on leave and hence the period cannot be treated except than "Dies-non", as it is a violation of Rule 62 of P&T Manual Volume III. It was also contended that any employee is not entitled to go on leave until and unless it is sanctioned by the proper leave sanctioning authority. Rule 62 of the P&T Manual Volume III is extracted hereunder for ready reference:

"Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies non, i.e. they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices."

Though it speaks about obtaining proper permission from the authority before taking leave, it is not the case of the applicant that he did not inform the officials about his sickness. He sought leave for a certain period due to his sickness, which was refused. He again sought leave from the authorities not being medically fit which was also not granted. The respondents immediately could have sent him for second medical opinion sending him before a proper medical board for conducting medical check up. But it is the respondents' own averments that the respondents sent his medical papers both the time delayed and on that count the Dean Medical Board sent back

the documents to the authorities and as the applicant himself joined back after being medically fit to his new place of posting, no medical check up was conducted by the respondents to ascertain the genuineness of the medical certificate produced by the applicant. While the respondents had accepted the medical fitness certificate of the applicant and allowed him to join duty and also released the leave salary on his request, after doing all these, issuing show cause notice and on explanation by the applicant along with medical certificate, treating the leave period as "Dies-non" is an action approbating and reprobating on the same issue. It is also seen that the applicant was given a transfer order on 11.04.2013 and relieved on 12.04.2013 afternoon. Accordingly, the applicant was entitled for some joining time also what he was not given at all by the respondents. Rule 162 of P&T Manual Volume III reads as under:-

Permission to avail of casual or/other leave should be taken in advance unless there are compelling reasons of medical or other urgent nature. An applicant for leave is not allowed to avail himself of it or to quit his office or his station until the leave is sanctioned and he has formally made over charge to the officer appointed to relieve him. **In cases where the absence of an official is due to compelling reasons, he should send immediate intimation to the head of his office by the quickest possible means and if the intimation has to be posted, it must be posted the same day.** He should also satisfy the head of the office as to the necessity of not taking permission to absent himself from office in advance. In cases of severe illness where leave is required for medical reasons and the official is not able to attend to his duties, he should send the medical certificate in accordance with the procedure laid down in Rule 229 of the S.Rs. of the P&T Compilation of the F.Rs. and S.Rs. along with the first intimation or later on during the course of that day. The medical certificate should also definitely mention that date from which the applicant is unwell and unable to attend to his duties. Failing the production of such a certificate no pay can be granted to the applicant and he will be liable to be granted leave without pay. Owing to the necessity for carrying on the work and injustice to the staff of the office on whom the extra work due to unforeseen absences must fall, it is obligatory on every member of the staff to report his non-attendance at once. In the case of an official on traffic or maintenance duties the report should be made at least prior to the commencement of the term of duty for which he is due and as much earlier as possible.

Bare reading of this rule reveals that the applicant on medical grounds sought leave and he has immediately sent intimation to the authority by

registered post with a medical certificate. He also mentioned the dates for which he required leave and was not able to attend his official duties. Hence it cannot be told that the applicant did not adhere to the rule as he has properly informed the respondents about his illness and sought permission for extension of his leave. It was the duty of the respondents to verify about the illness of the applicant if they were not in agreement with the contentions of the applicant. They could have very well sent him before medical board for verifying and cross checking his contention in regard to his illness. Failing to do so and also accepting his medical certificate allowing him to join duty and also releasing the leave salary for the leave period amounts that the respondents were satisfied with the medical certificate given by the applicant. Accordingly, once the medical certificate is accepted by the authority, in our considered opinion, the leave availed by the applicant cannot be termed as unauthorized absence. It is also seen that the order dated 02.04.2014 is not at all a speaking order why the period from 13.04.2013 to 26.05.2013 should be treated as "Dies-non". It is also seen in the order dated 13.03.2015 dealing with the appeal of the applicant, the respondents have not at all dealt anything about the genuineness of the medical certificate produced by the applicant. Accordingly, if the medical certificate was accepted by the respondents as genuine, in our considered view, the respondents are estopped from taking any further action on the basis of that medical certificate and hence we feel that the order dated 02.04.2014 and 13.03.2015 are not sustainable and accordingly they are quashed and set aside. The respondents are directed not to treat the period

from 13.04.2013 to 26.05.2013 as "Dies-non". The consequential benefits of quashing of these two orders shall follow the applicant.

7. Accordingly, the OA is allowed.

(T.JACOB)
MEMBER (A)

29.08.2018

(JASMINE AHMED)
MEMBER (J)

M.T.