

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.394/2003

New Delhi this the 25th day of September, 2003.

(8)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Sukh Pal Singh (Constable No.1619/9),
S/o Sh. Shiv Charan Singh,
R/o A-80/3, Gali No.9,
Khajuri Khas, Delhi.

-Applicant

(By Advocate Shri Munendra Singh)

-Versus-

1. Addl. DCP North Distt. Delhi.

2. Joint Commissioner of Police,
North Distt. Delhi.

-Respondents

(By Advocate Sh. Ajay Gupta)

ORDER (ORAL)

Orders dated 16.10.2002 as well as 4.7.2002 are assailed, treating the period of absence of 16 days as dies non. Quashment of the above has been sought with direction to treat the same as sanctioned against available leave in the credit of applicant.

2. Applicant who was working in the North District and was posted at PS Kotwali had availed casual leave with two holidays w.e.f. 15.6.2001.

3. As applicant had fallen sick at his native place he telephoned the Duty Officer intimating about his illness for which the photo copy of the cash receipt of the PCO booth was produced.

4. Applicant had joined duties after 16 days and was issued a show cause notice for censure and treating the period as dies non.



5. On his reply regarding his illness and on production of medical certificate from Government hospital respondents treated the absence period as wilful and decided the period as dies non on the principle of no work no pay.

6. The appeal preferred against the order was rejected, giving rise to the present OA.

7. The contention put-forth by applicant's counsel is that there is no application of mind by the authorities while considering the defence produced by applicant. As applicant had already informed about his sickness over telephone which is not disputed and produced the medical record the departmental authorities being non-medical entity without subjecting applicant to second medical examination have rejected his medical record and treated the period as dies non, which has an effect over his seniority.

8. On the other hand, respondents' counsel Sh. Ajay Gupta denied the contentions and stated that applicant was asked to undergo second medical examination but has not produced any medical record to substantiate the same. Applicant has denied this.

9. It is stated by learned counsel for respondents that orders have been passed in accordance with rules and as per Rule 19 of the CCS (Leave) Rules, 1972 cough and fever are not bona fide grounds to be absent for

16 days. The reply was meticulously considered and reasoned orders have been passed which are in accordance with law.

10. I have carefully considered the rival contentions of the parties and perused the material on record. Though applicant had informed respondents about his illness and has produced medical record the same has been held to be not justified without subjecting applicant to medical examination. Nothing on record has been produced to establish that applicant has refused to undergo medical examination.

11. Neither in the show cause notice nor in the orders passed as well as in the appellate order there is no indication as to notice for second medical examination. The same has been taken in reply without attaching copy and producing the record which has been denied by applicant.

12. I also find from the orders passed treating the period as dies non that the contention put-forth by applicant had not been taken into consideration and a non-speaking order has been passed. In the appellate order also only because applicant had failed to seek permission and doubting his illness orders have been maintained.

13. An absence on justified medical grounds cannot be treated as wilful to entail any penal order or consequences. As a quasi judicial authority it is incumbent upon respondents to have passed the reasoned

orders unless the requirement to record reasons is dispensed with. The aforesaid contention gains support from the decision of the Constitutional Bench of the Apex Court in S.N. Mukherjee v. Union of India, (1990) 4 SCC 594. Dies non under FR 17 has an adverse effect over seniority of a government servant, entailing loss in seniority. It causes civil consequences. Applicant's contentions as has not been controverted and considered, certainly he has been prejudiced in the matter of his defence.

14. In this view of the matter, orders are not sustainable in law and are accordingly quashed and set aside. The matter is remanded back to the respondents to pass fresh orders, dealing with all the contentions of applicant and on accord of reasonable opportunity to him within a period of three months from the date of receipts of a copy of this order. The OA stands disposed of accordingly. No costs.

S. Raju
(Shanker Raju)
Member (J)

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