

(2000) 11 GAU CK 0003
In the Gauhati High Court
Case No : Writ Petition (C) No. 551 of 1997

Arunangsho Roy	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 01-11-2000

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 32(2)

Citation : (2000) 3 GLT 446

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : Mr. B. Das, Mr. P.S. Chakraborty, Mr. A. Bhattacharjee and Mr. R.C. Debnath, for the Appellant; Mr. M.L. Roy, for the Respondent

Final Decision : Allowed

Judgement

1. Whether an order treating a particular period for which leave has been applied as "dies-non" could be passed without initiating a disciplinary proceedings and without giving an opportunity to the government employee to represent his case is sustainable in law?

2. The impugned order dated 24.4.1996 passed by the Governor of Tripura reads as follows :

"The Governor. Tripura is pleased to order that the period of un-authorised absence of Dr. Arunangshu Roy, Grade-V of T.H.S.South Nehalchandranagar Dispensary now posted at manubazar Rural Hospital. South Tripura from 6.11.1995 to 24.2.1996 shall be treated as dies-non except for the purpose of pension.

By order of the Governor. Sd/-Joint Secretary to the Government of Tripura."

3. Shri B.Das, learned senior counsel appearing for the petitioner submitted that the petitioner who was posted as Junior Medical officer-in-charge, South Nehalchandranagar Dispensary applied for commuted leave for 111 days on

medical ground for the period between 6.11.1995 to 24.2.1996. According to the learned counsel, all the leave applications were supported by medical certificates and therefore, there was no justifiable reason for the authorities concerned to refuse the leave applied for on medical ground. The concerned authority, instead of granting leave or passing any order of refusal, issued the impugned order treating the period as "dies-non" without any opportunity to the writ petitioner to represent his case. The learned counsel raised grievance on the ground that if the authorities had any doubt about the bona fide of the leave applications, they could have made an enquiry and proceeded against the writ petitioner by initiating departmental proceedings. It is further submitted that the impugned order passed dehor the Rules and without hearing the writ petitioner cannot be sustained in law since it has adverse financial effects. In support of this contention; the learned counsel relied upon a decision of the Supreme Court reported in B.D. Gupta Vs. State of Haryana, In para 16 of the said judgment, the Supreme Court held as follows :

"Besides, the real ratio in M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, was that if an order affects the employee financially, it must be passed after an objective consideration and assessment of all relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order"

4. The impugned order will definitely have some adverse effects on the financial side. Had the leave due been granted, the writ petitioner would have drawn the leave salary. Besides, the total period of service to be computed for finalisation of pension will also stand reduced. Therefore, the petitioner appears to have a genuine grievance to vindicate.

5. Let me now examine as to whether an order treating a particular period as dies-non could be passed by the leave sanctioning authority without initiating a disciplinary proceedings and without hearing the government employee.

6. The word "dies-non" does not occur anywhere in the Tripura State Civil Services (Leave) Rules, 1986. The C.C.S.(CCA) Rules which is applicable to the State Government employees provide for various penalties to be imposed. There is no mention of "dies-non" anywhere in the Rules. The Government of India's instructions contained in D.G.P & T's letter No. 6/28/70-Disc, I (SPB-I), dated 5th October, 1975, however, made a reference to "dies-non" and detailed how, then made and for what purpose "dies-non" may be ordered. The relevant part is quoted below :

(5) Action for unauthorized absence from duty of overstay of leave - The following decisions have been taken in consultation with the Department of Personnel and the Ministry of Finance :- (i)

(ii)

(iii) If a Government servant absents himself abruptly or applies for leave which

is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences, viz., that the entire period of absence would be treated as unauthorised, entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If, however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorised resulting in loss in pay and allowances for the period of absence under proviso to FR 17 (1) and thus a break in service. The question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard.

2. It is made clear that a Government servant who remains absent unauthorisedly without proper permission should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed in Rule 32(2)(a) of the CCS (Leave) Rules, 1972. However, the disciplinary authority should consider the grounds adduced by the Government servant for his unauthorised absence before initiating disciplinary proceedings.

If the disciplinary authority is satisfied that the grounds adduced for unauthorised absence are justified, the leave of the kind applied for and due admissible may be granted to him."

7. It would appear from the above instructions that in case of unauthorised absence, the officer concerned may be proceeded against immediately and the disciplinary authority should consider the grounds adduced by the government servant for his unauthorised absence before initiating disciplinary proceedings. After conclusion of the disciplinary proceedings, the disciplinary authority may treat the period of absence as unauthorised resulting in loss in pay and allowances and thus a "break in service". Whether this break in service should be condoned or not and treated as "dies-non" is a matter to be considered only after conclusion of disciplinary proceedings after giving reasonable opportunity to the government employee to represent his case.

8. In the instant case, the authorities concerned did not enquire into the bona fide of the ground for leave sought. They have not made any enquiry in this regard and no disciplinary proceedings have been initiated for the alleged unauthorised absence, Abruptly and without refusing the leave applied for, the impugned order has been passed. In my considered opinion, the entire exercise has been mis-directed and is in flagrant violation of the Government of India's instructions and the principles of natural justice.

9. It is pertinent to mention here that an order of "dies-non" may be passed when there is an established "break in service" and not otherwise. The break in service occurs when a government employee absents himself from duty without authority or permission or when leave applied for is refused for bona fide

reasons. A disciplinary proceedings in the given circumstances of the case has to be completed before any order treating the period of absence as "dies-non" is passed. There cannot be any deviating from this procedure.

10. In the instant case the requirements as highlighted above have not been followed. Reasons for disbelieving the medical certificates submitted along with the applications are also not forthcoming. If the medical certificates submitted by the writ petitioner were not genuine and the leave applied for was with the sole intention frustrating the order of transfer, it was open to the disciplinary authority to proceed against him as per provisions of C.C.S. (CCA) Rules. The impugned order because of the lapses indicated above, cannot survive.

11. In the result, the writ petition is allowed and the impugned order dated 24.4.1996 (Annexure-B) is hereby set aside. The matter is remitted back to the authority concerned for passing appropriate orders in accordance with the procedure highlighted here-in-above.