

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

WP(C) No.2183/2020

BASHIR AHMAD WANI ...Petitioner(s)

Through: Mr. Imam Abdul Muiz vice Mr. Javed Parray, Adv.

Vs.

J&K FOREST DEVELOPMENT
CORPORATION & OTHERS ...Respondent(s)

Through: Mr. Mubeen Wani, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER(ORAL)

09.07.2024

1. The petitioner has challenged order No.2459-66/Bix/FCC dated 14.12.2020 issued by respondent No.1, whereby his unauthorized absence with effect from 30.04.200 to 19.06.2020 has been treated as dies-non and the same has been directed to be recorded in his service book.

2. As per case of the petitioner, in the year 2020, he was posted as I/C Range Manager, Pattan, in J&K Forest Development Corporation Division, Baramulla. On 20.04.2020, respondent No.1 issued an order whereby the petitioner was transferred and posted as I/C Sales Range, Baramulla Boniyar. According to the petitioner, on 21.04.2020, he started suffering from back pain and, accordingly, he consulted

Orthopaedic doctors at Bone & Joint Hospital, Srinagar, and he was advised bed rest from three days. On 28th April, 2020, he again consulted doctors at Bone & Joint Hospital, Srinagar, on account of seriousness of his illness and he was again advised bed rest for two more weeks. The petitioner is stated to have applied for earned leave on medical grounds for a period of twenty days from 30th April, 2020 through speed post and then on 19.05.2020, he again sought extension of the said leave for a further period of thirty days with effect from 19.05.2020 to 19.06.2020.

3. On 28.05.2020, the petitioner is stated to have received a show cause notice from respondent No.4 alleging therein that he had wilfully remained absent from duty and had failed to hand over charge of his office to the new incumbent who had joined at Pattan in his place. Vide his communication dated 08.06.2020, the petitioner is stated to have responded to the show cause notice and conveyed to respondent No.4 the circumstances on account of which he had been unable to attend his office. It was also informed by him that he had handed over the charge to Shri Mohammad Ashraf Dar immediately on 30.04.2020 for handing over the same to the new incumbent.

4. It has been submitted by the petitioner that on the recommendations of respondent No.4, respondent No.1 issued the impugned order dated 14.12.2020, whereby the period of absence of the petitioner from duty has been treated as dies-non and his salary has been withheld.

5. The petitioner has challenged the impugned order on the ground that the same is arbitrary as the same has been passed without proper application of mind. It has been further submitted that neither any enquiry has been conducted by the respondents before passing the impugned order, nor the petitioner has been given an opportunity of hearing. It has been submitted that the reply to the show cause notice filed by the petitioner has not been considered by the respondents while passing the impugned order and they have not taken into account the fact that the petitioner was unable to attend his duties for the reasons beyond his control. It has been further contended that the respondents, without conducting any enquiry regarding genuineness of the medical record produced by the petitioner, have termed his absence from duty as 'unauthorized', though the petitioner had clearly applied for grant of leave on health grounds. According to the petitioner, it was not open to the respondents to pass the impugned order, particularly when the application for grant of leave submitted by him was not even rejected by the respondents.

6. The respondents have filed their reply to the writ petition wherein it has been submitted that the petitioner, instead of complying with the transfer order dated 20.02.2020, sent an application for grant of leave through WhatsApp messenger on 29.04.2020 at 5.00 p.m. to respondent No.4. It has been admitted by the respondents that along with the application, the petitioner had also submitted the medical record issued by Bone & Joint Hospital, Barzulla Srinagar, which indicated that he had

been advised to take rest for three days in the first instance and thereafter for two more weeks. It has been contended by the respondents that the reply to show cause notice furnished by the petitioner was found to be unsatisfactory and, accordingly, it was concluded that the petitioner had deliberately and intentionally chosen to disobey orders of the competent authority as he had not handed over the charge of Pattan Range to the new incumbent. It has been contended that the petitioner has unauthorizedly remained absent from duty with effect from 30.04.2020 to 19.06.2020 (50 days), as such, in light of the Government instructions under Article 163 of the J&K CSR read with clause (7) of the J&K State Forest Corporation Service Regulations, 1981, his absence from duty has been treated as dies-non.

7. I have heard learned counsel for the parties, perused the pleadings and the record of the case.

8. The factual aspects of the case have been more or less admitted by the parties. The controversy boils down to determination of the issues as to how the period of absence of the petitioner with effect from 30.04.2020 to 19.06.2020 (60 days) is to be treated. According to the petitioner, due to ill health, he had applied for leave with effect from 30.04.2020 for twenty days in the first instance and thereafter for another thirty days with effect from 19.05.2020. It has been admitted by the respondents that the petitioner had made an application for grant of leave to respondent No.4 that was accompanied by a copy of the medical record, but it has been claimed by the respondents that the same was sent

through WhatsApp messenger and not through proper mode. In this regard, it is to be noted that the petitioner had submitted his application through virtual mode during the period when first wave of Covid-19 Pandemic was at its peak all over India. In such circumstances the only mode through which the petitioner could have sent his application for grant of leave was through virtual mode. Even otherwise, the petitioner has specifically pleaded in his writ petition that he had also sent the application for grant of leave through speed post and in this regard, he has placed on record photocopy of the postal receipt.

9. From a perusal of Annexure-II to the writ petition, which is a copy of the application submitted by petitioner for grant of leave, it is revealed that the same is accompanied with prescribed proforma for grant of earned leave as also the copy of prescriptions issued by the Bone & Joint Hospital, Barzulla Srinagar. It appears that the petitioner was initially advised bed rest for three days and thereafter for two more weeks with effect from 28.04.2020. Another copy of prescription dated 02.06.2020 has also been placed on record which shows that the petitioner had been advised bed rest for two more weeks. Therefore, absence of the petitioner from duty was on medical grounds which was duly supported by medical record. In these circumstances, it cannot be stated that absence of the petitioner from duty for the aforesaid period was either deliberate or intentional. It can safely be stated that his absence from duty was for the reasons beyond his control due to his ill health. Thus, absence of the petitioner from duty by no stretch of imagination could have been

denoted as unauthorized in nature, particularly when he had applied for grant of leave and his application had not been rejected by the respondents.

10. If at all the respondents had any doubt about the genuineness of the medical record produced by the petitioner along with his application for grant of leave, it was open to them to take resort to the provisions contained in Rule 19 (III) of the Leave Rules, 1979, which reads as under:

“The authority competent to grant leave may, at its discretion secure a second medical opinion by requesting a Government Medical Officer not below the rank of a District Medical Officer/Civil Surgeon to have the applicant medically examined on the earliest possible date.”

11. From a perusal of the aforequoted Rule, it is clear that the competent authority to grant leave has an option of securing a second medical opinion by requesting a Government Medical Officer to have the applicant medically examined. Therefore, if at all the respondents doubted the authenticity of the medical prescriptions produced by the petitioner, they could have very well subjected the petitioner to a fresh medical examination. The respondents have simply denoted absence of the petitioner from duties as “unauthorized” and without even rejecting his application for grant of leave proceeded to treat the period of his absence as “*dies-non*”.

12. The impugned order passed by the respondents whereby absence of the petitioner has been treated as “*dies-non*” is not sustainable in law, because finding of the respondents that petitioner was unauthorizedly

absent is perverse being contrary to the record. The order of treating the petitioner's absence from duty as "*dies-non*" has serious consequences as it will subject the petitioner to loss of seniority. Thus, the impugned order has caused a grave prejudice to the rights of the petitioner. Such an order could not have been passed by the respondents in a mechanical manner, without considering the material on record. The impugned order, as such, deserves to be quashed.

13. Accordingly, the writ petition is allowed and the impugned order passed by the respondents is set aside. The respondents are directed to regularize the period of absence of the petitioner with effect from 30.04.2020 to 19.06.2020 by sanctioning leave of any kind whatever is admissible under rules in his favour. The respondents are further directed to release all consequential service benefits in favour of the petitioner.

Srinagar
09.07.2024
"Bhat Altaf-Secy"

(Sanjay Dhar)
Judge

Whether the order is reportable: Yes/No